

# CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

Managed by the Los Angeles Immigration Court AAs/JLCs; last edited by Brittany Aldredge on April 3, 2019

[Brittany.Aldredge@eoir.usdoj.gov](mailto:Brittany.Aldredge@eoir.usdoj.gov) (b) (6)

**Cal. Penal Code § 32 (accessory to a felony):** Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony. (2018).

## Maximum Sentence:

CPC § 33: (county jail) one year  
 CPC § 1170(h)(1): (county jail) three years, if term is not specified in the underlying offense  
 CPC § 1170(h)(2): (county jail) same as underlying offense  
 CPC § 1170(h)(3): (state prison) depends on if there are prior convictions

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Obstruction of Justice:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(S)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b><u>OBSTRUCTION OF JUSTICE: YES</u></b>  <u>Categorical Match?</u> Yes  <i>See Matter of Agustin Valenzuela Gallardo</i> , 27 I&N Dec. 449, 461 (BIA 2018) (“We therefore conclude that [§ 32] is categorically one for an aggravated felony offense relating to obstruction of justice.”)	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No  The Ninth Circuit held that CPC § 32 “refers to a potential set of crimes <i>broad</i> er than the generic definition of a ‘crime involving moral turpitude.’” <i>Navarro-Lopez v. Gonzales</i> , 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc) (emphasis added) (explaining that if the principal offense is not a CIMT then CPC § 32 covers conduct that does not constitute a CIMT), <i>overruled on other grounds by United States v. Aguila-Montes de Oca</i> , 655 F.3d 915 (9th Cir. 2011), <i>abrogated by Descamps v. U.S.</i> , 570 U.S. 254 (9th Cir. 2013).  Be aware that this case was decided before <i>Descamps v. United States</i> , 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it	<b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	N/A

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	<p>does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>		
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
	<p>The Board has appeared to interpret <i>Navarro-Lopez</i>, 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc) to mean that if the underlying offense to which the respondent was an accessory is a CIMT, then the respondent's CPC § 32 offense is a match to the CIMT definition too. <i>See Matter of Rivens</i>, 25 I&amp;N Dec. 623, 628 (BIA 2011) (reasoning, without holding, that "in our view, <i>Navarro-Lopez</i> is reasonably read only as finding that the California accessory after the fact conviction in that case was not for a crime involving moral turpitude because the underlying offense was itself not a crime involving moral turpitude"). However, the Board did not engage in divisibility analysis in making this interpretation. <i>See id.</i></p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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### Cal. Penal Code § 69 (resisting an executive officer):

(a) Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment. (2018)

(b) The fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a). (2018)

#### Maximum Sentence:

CPC § 33: (county jail) one year

CPC § 1170(h)(1): (county jail) three years, if term is not specified in the underlying offense

CPC § 1170(h)(2): (county jail) same as underlying offense

CPC § 1170(h)(3): (state prison) term depends on if there are prior convictions

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds?
			i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE: NO</u></b>  <b>Under 18 U.S.C. § 16(a): NO</b>  <u>Categorical Match?</u> No  <i>Flores-Lopez v. Holder</i> , 685 F.3d 857, 865 (9th Cir. 2012) (holding that CPC § 69 is not a categorical crime of violence because “CPC § 69 proscribes the use of <i>de minimis</i> force, and the ‘actually resisting prong’ of CPC § 69 is a general intent crime and does not by its nature create a substantial risk that force will be used”).  Be aware that this case was decided before <i>Descamps v. United States</i> , 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC:</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”)	N/A

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<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>		<p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO</b></p> <p>PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
<b>Unpublished Cases:</b>			
	<p>(b) (6)</p> <p>2005 WL 1104588 (BIA Jan. 28, 2005) (unpublished) (concluding that a conviction under § 69 can be a CIMT if the evidence demonstrates that a “respondent knowingly used violence on a police officer in the performance of her duties.”) (noting that CPC § 69 covers both morally turpitudinous and non-morally turpitudinous conduct).</p>		
<b>Relevant to Analysis:</b>			
<p><i>United States v. Lee</i>, 821 F.3d 1124, 1129 (9th Cir. 2016) (finding without analysis that CPC § 69 is divisible) (in the context of a “crime of violence” under the sentencing guidelines).</p>	<p><i>United States v. Gonzalez-Alvarez</i>, No. 18-CR-00149-BAS, 2018 WL 2717265, at *9 (S.D. Cal. May 18, 2018) (unpublished) (finding CPC § 69 overbroad and divisible with</p>	<p><i>Alphonsus v. Holder</i>, 705 F.3d 1031, 1045 (9th Cir. 2013) (questioning the Board’s analysis of CPC § 69 as a PSC).</p> <p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may</p>	



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	<p>respect to the federal definition of a CIMT and proceeding to modcat).</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	<p>consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a <i>per se</i> particularly serious crime.</p>	
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## Cal. Penal Code § 192(a) (voluntary manslaughter):

Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

(a) Voluntary-upon a sudden quarrel or heat of passion (2018)

### Maximum Sentence:

CPC § 193(a): 11 years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime under?	Other Inadmissibility or Removability Grounds?
			i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE:</u></b>  <b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No  <i>Quijada-Aguilar v. Lynch</i> , 799 F.3d 1303, 1306–07 (9th Cir. 2015) (finding that CPC § 192(a) is not categorically a crime of violence because it does not require an intentional use of force) (relying on <i>People v. Lasko</i> , 23 Cal.4th 101 (Cal. 2000)).  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <i>But see Quijada-Aguilar v. Lynch</i> , 799 F.3d 1303, 1307 n.4 (9th Cir. 2015) (concluding without performing divisibility analysis that CPC § 192(a) is not a crime of violence because the government did not contend that the modified categorical approach applies).  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC:</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”)  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	N/A

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<p><i>But see Quijada-Aguilar v. Lynch</i>, 799 F.3d 1303, 1307 n.4 (9th Cir. 2015) (concluding without performing divisibility analysis that CPC § 192(a) is not a crime of violence because the government did not contend that the modified categorical approach applies).</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>			
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
	<p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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	<p>I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p> <p><i>Compare Judulang v. Holder</i>, 565 U.S. 42, 54 (2011) (“[V]oluntary manslaughter is ‘a crime involving moral turpitude.’” (dicta)), with <i>Matter of Joel Judulang</i>, 2006 WL 557842 (BIA 2006) (unpublished) (clarifying that voluntary manslaughter statute in Supreme Court opinion was CPC § 192(a)).</p> <p><i>Matter of Lopez-Meza</i>, 22 I&amp;N Dec. 1188, 1193 (BIA 1999) (listing voluntary manslaughter as a CIMT)</p>		
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**Cal. Penal Code § 203 (mayhem):** Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. (2018)

**Maximum Sentence:**

CPC § 204: 8 years in state prison

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime under <i>Matter of Frentescu</i> , 18 I&N Dec. 244 (BIA 1982)?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<p><b><u>CRIME OF VIOLENCE:</u> YES</b></p> <p><b>Under 18 U.S.C. § 16(a): YES</b></p> <p><u>Categorical Match?</u> Yes</p> <p><i>Matter of Kim</i>, 26 I&amp;N Dec. 912, 921 (BIA 2017) (holding CPC § 203 to be categorically a crime of violence under § 16(a) because it requires a “deliberate and intentional act [that] must necessarily involve the use of force, and, because that force must result in great bodily injury under California law, the force used must necessarily be violent in nature”).</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C.</p>	<p><b><u>CIMT:</u> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b><u>PSC:</u></b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”)</p> <p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	N/A



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§ 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).			
<b>Unpublished Cases:</b>			
	(b) (6), 2006 WL 1558808, at *2 (BIA 2006) (unpublished) (finding CPC § 203 to be “a crime involving moral turpitude because . . . the conduct described therein is malicious and serious”) (citing <i>Matter of Lopez-Meza</i> , 22 I&N Dec. 1188, 1191–92 (BIA 1999)).		
<b>Relevant to Analysis:</b>			
		Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 207(a): Kidnapping</b> Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)	CPC § 208(a): <b>8 years</b>  CPC § 208(b): <b>11 years</b> , if kidnapped person is under age 14	<b>Crime of Violence under 18 U.S.C. § 16(a): NO</b>  It is not categorically a crime of violence because it is missing the “force” element. <i>Delgado-Hernandez v. Holder</i> , 697 F.3d 1125, 1127 (9th Cir. 2012). Moreover, it most likely indivisible as it is missing the element of physical force and only states “any other means.” <i>Id.</i>  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	<b>NO</b>  A conviction under § 207(a) is not categorically a CIMT because it does not necessarily involve an intent to injure, actual injury to the victim, or a special class of victims. The modified categorical approach may be used to determine if a particular conviction involved morally turpitudinous conduct. <i>Castrijon-Garcia v. Holder</i> , 704 F.3d 1205, 1218 (9th Cir. 2013).  Kidnapping is a general intent crime, a person can be convicted of kidnapping by either a showing of force or fear; either are alternative <i>means</i> for finding a defendant guilty of kidnapping. <i>See People v. Moya</i> , 4 Cal. App. 4th 912, 915-17 (1992). CPC § 207(a) does not match the generic definition of a CIMT, and it is likely indivisible, therefore <i>Castrijon-Garcia</i> is no longer good law for the proposition that the modified categorical approach is appropriate.	<b>Crime of Domestic Violence: MAYBE</b>  To qualify as a crime of domestic violence, it must be a crime of violence involving a victim with a domestic relationship listed in section 237(a)(2)(E)(i).  The <u>modified categorical approach</u> may be used to determine if the requisite “domestic relationship” existed even if the underlying criminal statute lacked a domestic element. <i>Cisneros-Perez v. Gonzales</i> , 465 F.3d 386, 392 (9th Cir. 2006).
<b>Cal. Penal Code § 667.85: Kidnapping child under age of 14 years</b> Any person convicted of a violation of Section 207 or 209, who kidnapped or carried away any child under the age of 14 years with the intent to permanently deprive the parent, or legal guardian custody of that child, shall be punished by imprisonment in the state prison for an additional five years.				
<b>This is an enhancement to the above crime</b>	Adds an additional 5 year sentence	<b>Crime of Violence: NO</b> <i>See above</i>	<b>MAYBE</b>  Involves a special class of persons (children) and morally turpitudinous conduct (depriving custody) but no need to demonstrate harm or physical force	

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			<p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See Matter of Velasquez-Rios, 27 I&amp;N Dec. 470, 472–73 (BIA 2018).</u> For more information, see end of this chart.</p>	
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# CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 210.5: False Imprisonment for purposes of protection from arrest or use as shield</b> Every person who commits the offense of false imprisonment, as defined in Section 236, against a person for purposes of protection from arrest, which substantially increases the risk of harm to the victim, or for purposes of using the person as a shield is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or eight years.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii) / 101(a)(43)(F)  <b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)	CPC § 210.5: <b>8 years;</b> more if there are prior convictions	<b>Crime of Violence under 18 U.S.C. § 16(a):</b> (b) (5)  There is no precedential case law addressing whether § 210.5 is a crime of violence under 18 U.S.C. § 16(a). However, false imprisonment is not a crime of violence because it does not require force to be used, <i>United States v. Hernandez-Hernandez</i> , 431 F.3d 1212, 1217 fn. 5 (9th Cir. 2005), and § 210.5 does not add a force element.  <b>Crime of Violence under 18 U.S.C. § 16(b):</b> <b>NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	(b) (5)  There is no precedential case law addressing whether § 210.5 is a CIMT.  Note: there is no exact federal counterpart to Cal. Penal Code § 210.5. It is thus not possible to do an exact categorical or modified categorical analysis for § 210.5.  Misdemeanor false imprisonment, which does not require the intent to harm, is <u>not categorically</u> a CIMT. <i>Saavedra-Figueroa v. Holder</i> , 625 F.3d 621, 626 (9th Cir. 2010). Moreover, the Ninth Circuit has held that felony false imprisonment does not qualify as a categorical CIMT. <i>Turijan v. Holder</i> , 744 F.3d 617, 621 (9th Cir. 2014).  (b) (5)  <i>See Turijan v. Holder</i> , 744 F.3d 617, 622 n. 7 (9th Cir. 2014).  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum	<b>Crime of Domestic Violence: NO</b>  It is not categorically a crime of violence under 18 U.S.C. §§ 16(a) or 16(b). Furthermore, there is no element of a protected class in the state statute.

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			possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See Matter of Velasquez-Rios, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</u>	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<p><b><u>Cal. Penal Code § 220: Assault with intent to commit mayhem, rape, sodomy, oral copulation, or other specified offense</u></b></p> <p>(a)(1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.</p> <p>(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.</p> <p>(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.</p>				
<p><b>Aggravated Felony:</b>  <b>Crime of Violence</b>            237(a)(2)(A)(iii) /            101(a)(43)(F)</p> <p><b>CIMT</b>            212(a)(2)(A)(i)(I)            237(a)(2)(A)(i)</p>	<p><b>6 years; 9 years if the victim is under 18; life with the possibility of parole if committed during a burglary</b></p>	<p><b>Crime of Violence under 18 U.S.C. § 16(a): YES</b></p> <p>Assault with the intent to commit rape is an aggravated form of attempted rape, and “requires at least the attempted application of some physical force,” rendering it a forcible sex offense and thus a COV. <i>U.S. v. Bolanos-Hernandez</i>, 492 F.3d 1140, 1146-47 (9th Cir. 2007)</p> <p><b>Crime of Violence under 18 U.S.C. § 16(b): NO</b></p> <p><i>Sessions v. Dimaya</i>, 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>	<p><b>PROBABLY</b></p> <p>Although there is no case directly on point, a conviction for assault with intent to commit rape requires the specific intent to commit rape, which is a CIMT. <i>See, e.g., Nunez v. Holder</i>, 594 F.3d 1124, 1132 (9th Cir. 2010) (citing with approval to <i>In re Lopez-Meza</i>, 22 I&amp;N Dec. 1188, 1193 (BIA 1999))</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472-73 (BIA 2018). For more information, see end of this chart.</p>	

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 236: False Imprisonment</b> False imprisonment is the unlawful violation of the personal liberty of another.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)	CPC § 237(a): <b>1 year; 3 years</b> in county jail or state prison, if effected by violence, menace, fraud, or deceit  CPC § 237(b): <b>4 years</b> , if committed against an elder or dependent adult using violence, menace, fraud or deceit	<b>Crime of Violence under 18 U.S.C. § 16(a): NO</b>  A violation of § 236 or § 237 is <u>not categorically</u> a crime of violence as fraud, deceit or menace can be used. <i>U.S. v. Hernandez-Hernandez</i> , 431 F.3d 1212, 1217 fn. 5 (9th Cir. 2005).  CPC § 236 or § 237 are not likely to be divisible as the jury instructions do not separate the “by violence or menace” into distinct elements. Therefore, the modified categorical approach is not appropriate.  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	(b) (5)  Misdemeanor false imprisonment, which does not require the intent to harm, is <u>not categorically</u> a CIMT. <i>Saavedra-Figueroa v. Holder</i> , 625 F.3d 621, 626 (9th Cir. 2010). Moreover, the Ninth Circuit has held that felony false imprisonment does not qualify as a categorical CIMT. <i>Turijan v. Holder</i> , 744 F.3d 617, 621 (9th Cir. 2014).  (b) (5)  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.	<b>Crime of Domestic Violence: NO</b>  It is not categorically a crime of violence under 18 U.S.C. §§ 16(a) or 16(b). Furthermore, there is no element of a protected class in the state statute.

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## Cal. Penal Code § 242 (Battery): A battery is any willful and unlawful use of force or violence upon the person of another (1872).

**Maximum Sentence:** 4 years (depending on persons against whom battery is committed and whether serious bodily injury is inflicted)

CPC § 243(a): 6 months

CPC § 243(b): 1 year in county jail, if committed against certain persons

CPC § 243(c): 3 years, if committed against certain persons and an injury is inflicted upon that victim

CPC § 243(d): 4 years, if seriously bodily injury is inflicted upon victim

CPC § 243(e)(1): 1 year in county jail, if committed against a spouse, cohabitant, parent of defendant's child, fiancé, or former fiancée or spouse

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Crime Involving Domestic Violence?
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 241(b)(3)(B)(ii)	§ 237(a)(2)(E)(i)
<p><b><u>CRIME OF VIOLENCE:</u></b></p> <p><b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No</p> <p>The Ninth Circuit has held that “force or violence” is a “term of art, requiring neither a force capable of hurting or causing injury nor violence in the usual sense of the term.” <i>Ortega-Mendez v. Gonzales</i>, 450 F.3d 1010, 1016 (9th Cir. 2006). For example, mere unwanted touching could constitute force under § 242. <i>See Singh v. Ashcroft</i>, 486 F.3d 1228, 1232 (9th Cir. 2004) (holding that conduct involving mere offensive touching does not rise to the level of “crime of violence”). Thus, a violation of § 242 is not categorically a crime of violence under 18 U.S.C. § 16. <i>See Matter of Sanudo</i>, 23 I&amp;N Dec. 968, 973–74 (BIA 2006).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the</p>	<p><b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b></p> <p><u>Categorical Match?</u> No</p> <p>A violation of CPC § 242 is not categorically a CIMT. One may be convicted without injuring or intending to do so. <i>See Matter of Sanudo</i>, 23 I&amp;N Dec. 968, 973 (BIA 2006).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b><u>PSC:</u></b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p>	<p><b><u>CRIME OF DOMESTIC VIOLENCE: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b></p> <p><u>Categorical Match?</u> No</p> <p>An offense under § 242 cannot qualify as a crime of domestic violence unless it also qualifies as a crime of violence under 18 U.S.C. § 16. <i>See Matter of Sanudo</i>, 23 I&amp;N Dec. 968, 973–74 (BIA 2006). Battery under § 242 requires neither a force capable of hurting or causing injury nor violence in the usual sense of the term, so it does not qualify categorically as a crime of violence under 18 U.S.C. § 16. <i>See Matter of Milian</i>, 25 I&amp;N Dec. 197, 198 (BIA 2010).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p>

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<p>modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>		<p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	<p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
	<p>This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	<p>While <i>Matter of Milian</i> proceeds to the modified categorical approach, it does not discuss divisibility and cannot be used to support use of the modified categorical approach. <i>See Matter of Milian</i>, 25 I&amp;N Dec. 197, 199–202 (BIA 2010).</p>

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	days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See Matter of Velasquez-Rios, 27 I&amp;N Dec. 470, 472–73 (BIA 2018).</u> For more information, see end of this chart.		
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**Cal. Penal Code § 243(b) (Battery – Committed Against Certain Law Enforcement Officials):** When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (2016)

**Maximum Sentence:** 1 year in county jail

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 241(b)(3)(B)(ii)	N/A
<b>CRIME OF VIOLENCE:</b>  <b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point  <b>Under 18 U.S.C. § 16(b): NO</b>  <u>Categorical Match?</u> N/A  <u>Divisible?</u> N/A  <u>Proceed to Modified Categorical?</u> N/A	<b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b>PSC:</b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).	N/A

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A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i> , 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).		<b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	
<b>Unpublished Cases:</b>			
<i>See</i> (b) (6), No. 11-CV-0435W DHB, 2013 WL 6159317 at *5 (S.D. Cal. Nov. 25, 2013) (unpublished) (holding that “the simple touching” of an officer constituted a battery and violation of Cal. Penal Code § 243(b)). (b) (6), 2011 WL 1792077 (BIA Apr. 21, 2011) (unpublished) (“We note that the criminal offense at issue, battery of a peace officer pursuant to section 243(b) of the California Penal Code, is not an aggravated battery offense.”)			N/A
<b>Relevant to Analysis:</b>			
<i>See supra</i> analysis under § 242.	<i>See supra</i> analysis under § 242; <i>cf. Matter of Danesh</i> , 19 I&N Dec. 669, 673 (BIA 1988) (holding that an aggravated assault against a police officer under Texas law is a CIMT).  This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.	Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a <i>per se</i> particularly serious crime.	N/A

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### Cal. Penal Code § 243(c) (Battery – Injury Inflicted Against Certain Officials):

(1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment. (2016)

**Maximum Sentence:** 3 years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE:</u></b>  <b><u>CPC § 243(c)(1):</u></b>  <b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point  <b>Under 18 U.S.C. § 16(b): NO</b>	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC:</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall	N/A

## CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

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<p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p> <p><b><u>CPC § 243(c)(2):</u></b></p> <p><b>Under 18 U.S.C. § 16(a): YES</b></p> <p><u>Categorical Match?</u> Yes</p> <p><i>See United States v. Colon-Arreola</i>, 753 F.3d 841, 844–45 (9th Cir. 2014) (“[A] person cannot be convicted under § 243(c)(2) unless he willfully and unlawfully applies force sufficient to not just inflict a physical injury on the victim, but to inflict a physical injury severe enough that it requires professional medical treatment. Section 243(c)(2), therefore, fits squarely within the term [crime of violence] by requiring the deliberate use of force that injures another.”) (internal quotation marks and citation omitted).</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p>		<p>be considered to have committed a particularly serious crime.”).</p> <p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO</b></p> <p>PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</p>	
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A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i> , 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).			
<b>Unpublished Cases:</b>			
	See (b) (6) 2004 WL 1167311, at *2 (BIA Jan. 21, 2004) (unpublished) (holding that a conviction under CPC § 243(c) is a conviction for a crime involving moral turpitude).		N/A
<b>Relevant to Analysis:</b>			
	This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT, nor whether the offense meets any minimum sentence requirement.	Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a <i>per se</i> particularly serious crime.	N/A



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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
<b><u>Cal. Penal Code § 243(d): Battery – Serious Bodily Injury Inflicted</u></b> When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.			
<b>Aggravated Felony:</b> <b>Crime of Violence:</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT 212(a)(2)(A)(i)(I)</b> 237(a)(2)(A)(i)	CPC § 243(d): <b>4 years</b>	<b>Crime of Violence under 18 U.S.C. § 16(a): YES</b>  <i>Takapu v. Holder</i> , 356 F. App'x 17 (9th Cir 2009) (unpublished) applies the categorical approach and concludes that because a § 243(d) offense “requires the willful use of physical force that causes serious injury...[it] will always involve ‘the use...of physical force ...against the person...of another’”, and is thus categorically a COV, and an AF.  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	<b>NO</b>  <i>Uppal v. Holder</i> , 605 F.3d 712, 718-19 (9th Cir 2010), cites an unpublished BIA decision finding that a CPC § 243(d) conviction is not categorically a CIMT because “no evil intent is required.”  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 243(e)(1): Battery - Domestic Relationship</b> When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.				
<b>Aggravated Felony:</b> <b>Crime of Violence:</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT 212(a)(2)(A)(i)(I)</b> 237(a)(2)(A)(i)  <b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)	CPC § 243(e)(1): <b>1 year</b>	<b>Crime of Violence under 18 U.S.C. § 16(a):</b> <b>NO</b>  The BIA has found that battery under CPC § 243 does not qualify categorically as a crime of violence under section 18 U.S.C. § 16 because it does not require force capable of hurting or causing injury, nor violence in the usual sense of the term. <i>Matter of Milian-Dubon</i> , 25 I&N Dec. 197, 197 (BIA 2010). Therefore, CPC § 243(e)(1) is not categorically a crime of violence. <i>Milian-Dubon</i> , 25 I&N Dec. at 197. <sup>1</sup>  Section 243(e)(1) is indivisible because the underlying statute defining “battery,” CPC § 242, is indivisible. <i>See</i> CPC § 242 <i>supra</i> at 6. Therefore, the Court cannot proceed to the <u>modified categorical approach</u> .  <b>Crime of Violence under 18 U.S.C. § 16(b):</b> <b>NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is	<b>NO</b>  Violation of § 242 is <u>not categorically</u> a CIMT. One may be convicted without injuring or intending to do so. <i>Matter of Sanudo</i> , 23 I&N Dec. 968, 973 (BIA 2006).  CPC § 243(e)(1) is not categorically a CIMT because it does not require that injury is inflicted on the victim. <i>Galeana-Mendoza v. Gonzalez</i> , 465 F.3d 1054, 1059-60 (9th Cir. 2006); <i>see also Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159 (9th Cir. 2006) (AZ battery statute in domestic context).  Although battery of a victim described in § 243(e)(1) (domestic relationships) increases culpability, the relationship element is not sufficient by itself to transform every battery under that section	<b>Crime of Domestic Violence: PROBABLY NOT</b>  A violation of § 243(e)(1) cannot qualify as a crime of domestic violence unless it also qualifies as a crime of violence under 18 U.S.C. § 16. <i>Matter of Sanudo</i> , 23 I&N Dec. 968 (BIA 2006).  <i>See Aggravated Felony Analysis</i>

<sup>1</sup> The Ninth Circuit in *Habibi v. Holder*, 673 F.3d 1082, 1085 (9th Cir 2011), denied review for a petitioner claiming that his CPC § 243(e)(1) conviction did not bar his application for cancellation. The Court noted in dicta that an IJ had already found that the petitioner’s 243(e)(1) conviction constituted a crime of violence, and an AF that would make the petitioner removable. 673 F.3d at 1085.

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		unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).definition of the crime of violence aggravated felony).	<p>into a CIMT. <i>Galeana-Mendoza</i>, 465 F.3d at 1059-60.</p> <p>Jury Instructions do not divide the separate requirements into different elements; therefore, the statute is likely indivisible. Modified categorical approach is inappropriate.</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472-73 (BIA 2018). For more information, see end of this chart.</p>	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<p><b>Cal. Penal Code § 243.4: Sexual Battery</b></p> <p>(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery;</p> <p>(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery;</p> <p>(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery;</p> <p>(d) Any person for the purpose of sexual arousal, sexual gratification, or sexual abuse causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery;</p> <p>(e) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery.</p>				
<p><b>Aggravated Felony:</b> <b>Sexual Abuse of a Minor</b> 237(a)(2)(A)(iii)/ 101(a)(43)(A)</p> <p><b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)</p> <p><b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)</p> <p><b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)</p>	<p>CPC § 243.4(a) - (d): <b>4 years</b></p> <p>CPC § 243.4(e): <b>6 months</b> (misdemeanor touching)</p>	<p><b>Sexual Abuse of a Minor: NO</b></p> <p>Violation of § 243.4(a) does not categorically constitute sexual abuse of a minor under the categorical approach because the victim's status as a minor is not a necessary element of the offense on which the conviction rested. <i>Sanchez-Avalos v. Holder</i>, 693 F.3d 1011, 1018-19 (9th Cir. 2012) <i>partial abrogation on other grounds recognized in Chavez-Solis v. Lynch</i>, 803 F.3d 1004 (9th Cir. 2015).</p> <hr/> <p><b>Crime of Violence under 18 U.S.C. § 16(a):</b></p> <p style="text-align: center;"><b><u>Section 243.4(a):NO</u></b></p> <p>The statute has no requirement of actual or threatened physical force. <i>Lisbey v. Gonzales</i>, 420 F.3d 930, 932 (9th Cir. 2005).</p> <p style="text-align: center;"><b><u>Section 243.4(e):NO</u></b></p> <p>It does not carry the requisite term of imprisonment.</p>	<p><b>YES</b></p> <p>Violation of § 243.4 is <u>categorically</u> a CIMT. <i>Gonzalez-Cervantes v. Holder</i>, 709 F.3d 1265, 1270 (9th Cir. 2013) (finding that a conviction under 243.4(e) is categorically a CIMT); <i>U.S. v. Ortega-Ascanio</i>, 376 F.3d 879, 882 (9th Cir. 2004); <i>Matter of Soto-Torres</i>, 2004 WL 3187226 (BIA Dec. 27, 2004) (unpublished); <i>see also People v. Chavez</i>, 100 Cal.Rptr.2d 680, (Cal. Ct. App. 2000) (in addressing the crime of sexual battery under § 243.4(a), the court found "the degrading use of another, against [their] will, for one's own sexual arousal is deserving of moral condemnation</p>	<p><b>Crime of Domestic Violence: NO</b></p> <p>An offense under § 243.4 cannot qualify as a crime of domestic violence unless it also qualifies as a crime of violence under 18 U.S.C. § 16. <i>Matter of Samudo</i>, 23 I&amp;N Dec. 968, 973-74 (BIA 2006).</p> <p>Also, the requisite domestic relationship is not an element of the language of the statute; the Court cannot apply the <u>modified categorical approach</u>.</p>

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		<p><b>Crime of Violence under 18 U.S.C. § 16(b):</b></p> <p style="text-align: center;"><b><u>Both sections 243.4(a) &amp; 243.4(e): NO</u></b></p> <p><i>Sessions v. Dimaya</i>, 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>	<p>and is thus a crime of moral turpitude”).</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	
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<b>Cal. Penal Code § 245(a) (Assault with a Deadly Weapon):</b> (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm . . . (2018) (2) Any person who commits an assault upon the person of another with a firearm . . . (2018) <b>Maximum Sentence:</b> CPC § 245(a)(1): four years in state prison CPC § 245(a)(2): four years in state prison			
<b>Aggravated Felony?</b>	<b>Crime Involving Moral Turpitude?</b>	<b>Particularly Serious Crime?</b>	<b>Other Inadmissibility or Removability Grounds?</b> i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE:</u></b>  <b><u>CPC § 245(a)(1): YES</u></b>  <b>Under 18 U.S.C. § 16(a): YES</b>  <u>Categorical Match?</u> Yes  <i>See United States v. Vasquez-Gonzalez</i> , 901 F.3d 1060, 1065–68 (9th Cir. 2018) (holding that a violation of CPC § 245(a)(1) is categorically a crime of violence under 18 U.S.C. § 16(a)).  <b>Under 18 U.S.C. § 16(b): NO</b>  <u>Categorical Match?</u> N/A  <u>Divisible?</u> N/A  <u>Proceed to Modified Categorical?</u> N/A  A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i> , 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	<b><u>CIMT:</u></b>  <b><u>CPC § 245(a)(1): YES</u></b>  <u>Categorical Match?</u> Yes  <i>See Matter of Wu</i> , 27 I&N Dec. 8, 15 (BIA 2017) (finding that a violation of CPC § 245(a)(1) is categorically a CIMT because “the conduct criminalized under section 245(a)(1) ‘deviates further and further from the private and social duties that persons owe to one another and to society in general’ and categorically falls within the definition of a [CIMT]”).  <b><u>CPC § 245(a)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under Matter of Frentescu</b> , 18 I&N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	N/A



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<p><b><u>CPC § 245(a)(2):</u></b></p> <p><b>Under 18 U.S.C. § 16(a): YES</b></p> <p><b><u>Categorical Match?</u> Yes</b></p> <p><i>See United States v. Heron-Salinas</i>, 566 F.3d 898, 899 (9th Cir. 2009) (holding that a violation of CPC § 245(a)(2) is categorically a crime of violence under 18 U.S.C. § 16(a)).</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><b><u>Categorical Match?</u> N/A</b></p> <p><b><u>Divisible?</u> N/A</b></p> <p><b><u>Proceed to Modified Categorical?</u> N/A</b></p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>			
<b>Unpublished Cases:</b>			
			N/A
<b>Relevant to Analysis:</b>			
	<p>(b) (5)</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	N/A



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	days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See Matter of Velasquez-Rios, 27 I&amp;N Dec. 470, 472–73 (BIA 2018).</u> For more information, see end of this chart.		
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 246.3: Negligent Discharge of a Firearm</b> (a) Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170. (b) Except as otherwise authorized by law, any person who willfully discharges a BB device in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year. (c) As used in this section, "BB device" means any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT 212(a)(2)(A)(i)(I)</b> 237(a)(2)(A)(i)  <b>Firearms Offense</b> 237(a)(2)(C)	<b>3 years</b> , pursuant to 1170(h), more if there are prior convictions	<b>Crime of Violence under 18 U.S.C. § 16(a): NO</b>  CPC § 246.3 does not require the use, attempted use, or threat of use of force.  "The elements of section 246.3 are: (1) the defendant unlawfully discharged a firearm; (2) the defendant did so intentionally; (3) the defendant did so in a grossly negligent manner which could result in the injury or death of a person." <i>People v. Overman</i> , 126 Cal.App.4th 1344, 1361 (2005) (internal citations omitted)  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	(b) (5)    <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472-73 (BIA 2018). For more information, see end of this chart.	<b>Firearms Offense: YES</b>  CPC § 246.3 is a categorical firearms offense under INA § 237(a)(2)(c) for "using" a firearm. <i>Valerio-Ochoa v. INS</i> , 241 F.3d 1092, 1095-96 (9th Cir. 2001)

## CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

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### Cal. Penal Code § 261(a) (Rape):

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

- (1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.
- (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
- (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
- (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:
  - (A) Was unconscious or asleep.
  - (B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
  - (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
  - (D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
- (5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
- (6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
- (7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official. . .

#### Maximum Sentence:

CPC § 264(a): three, six or eight years

CPC § 264(c)(1) (if committed upon a child who is under fourteen years of age): nine, eleven, or thirteen years

CPC § 264(c)(2) (if committed upon a minor who is fourteen years of age or older): seven, nine, or eleven years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Rape:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(A)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b>CRIME OF RAPE: YES</b>  <u>Categorical Match?</u> Yes  <i>See Castro-Baez v. Reno</i> , 217 F.3d 1057, 1059 (9th Cr. 2000) (referencing a respondent's conviction under CPC § 261(a)(3) and holding that a conviction	<b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point	<b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) ("[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.").	N/A

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<p>under CPC § 261 “qualifies as an aggravated felony.”).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b><u>PSC Under Matter of Frentescu:</u> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
	<p>Although there are no published cases holding that rape under CPC § 261(a) is categorically a CIMT, the Ninth Circuit has consistently stated that rape is categorically a CIMT. <i>See Nunez v. Holder</i>, 594 F.3d 1124, 1132 (9th Cir. 2010) (stating that the Court has “recognized that rape is categorically a crime of moral turpitude.”) (citing <i>Navarro-Lopez v. Gonzales</i>, 503 F.3d 1063, 1075 (9th Cir. 2007) (Reinhardt, J., concurring) (stating that rape has previously been recognized as “base, vile, and depraved”) <i>overruled on other grounds by U.S. v. Aguila-Montes de Oca</i>, 655 F.3d 915 (9th Cir. 2011) (en banc)); <i>see also Robles-Urrea v. Holder</i>, 678 F.3d 702, 708 (9th Cir. 2012) (suggesting that rape is categorically a CIMT because it involves “rather grave acts of baseness or depravity”) (citing <i>Rodriguez-</i></p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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*Herrera v. INS*, 52 F.3d 238, 240 (9th Cir. 1995)).

Similarly, the Board has also indicated, in dicta, that the crime of rape has been recognized as a CIMT because it involves a grave act of baseness or depravity. *See Matter of Lopez-Meza*, 22 I&N Dec. 1188, 1193 (BIA 1999).

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## Cal. Penal Code § 261.5 (Statutory Rape):

- (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not a spouse of the perpetrator, if the person is a minor (under the age of 18);
- (b) Any person who engages in an act of unlawful sexual intercourse accomplished with a minor who is not more than three years older or three years younger than the perpetrator, is guilty a misdemeanor;
- (c) Any person who engages in an act of unlawful sexual intercourse accomplished with a minor who is more than three years younger than the perpetrator, is guilty a misdemeanor or a felony;
- (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of a misdemeanor or a felony.

### Maximum Sentence:

CPC § 261.5(b): six months

CPC § 261.5(c): three years

CPC § 261.5(d): four years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Sexual Abuse of a Minor:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(A)  <b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse:</b> § 237(a)(2)(E)(i)
<b><u>SEXUAL ABUSE OF A MINOR:</u></b>  <b>CPC § 261.5(b): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point  <b>CPC § 261.5(c): NO</b>  <u>Categorical Match?</u> No	<b><u>CIMT:</u></b>  <b>CPC § 261.5(b): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point  <b>CPC § 261.5(c): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point	<b><u>PSC:</u></b>  <b>CPC § 261.5(b): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at	<b><u>CRIME OF CHILD ABUSE:</u></b>  <b>CPC § 261.5(b): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point



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<p><i>Esquivel-Quintana v. Sessions</i>, 137 S. Ct. 1562, 1568 (2017) (holding that CPC § 261.5(c) is <u>not categorically</u> a crime of sexual abuse of a minor because the federal definition requires that the victim be younger than sixteen years of age and the California statute criminalizes sexual intercourse when the victim is up to seventeen years old).</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point.</p> <p><i>But see Esquivel-Quintana</i>, 137 S. Ct. at 1572–73 (concluding without performing divisibility analysis that CPC § 261.5(c) cannot be a sexual abuse of a minor offense).</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.</p> <p><b>CPC § 261.5(d): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No</p> <p><i>Pelayo-Garcia v. Holder</i>, 589 F.3d 1010, 1016 (9th Cir. 2009) (holding that CPC § 261.5(d) is <u>not a match</u> to a crime of sexual abuse of a minor because it does not include the requisite scienter requirement and it criminalizes sexual conduct that is not necessarily abusive).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 261.5(d): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No</p> <p><i>Quintero-Salazar v. Keisler</i>, 506 F.3d 688, 694 (9th Cir. 2007) (stating that a conviction under CPC § 261.5(d) is not categorically a CIMT because it covers conduct that is <i>malum prohibitum</i>, in some cases, and because it is a strict liability offense and therefore lacks the requisite element of willfulness or evil intent to constitute a CIMT); <i>see also Matter of Guevara Alfaro</i>, 25 I&amp;N Dec. 417, 424 (2011) (acknowledging that CPC § 261.5(d) may include CIMT and non-CIMT conduct).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p>least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><b>CPC § 261.5(c): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><b>CPC § 261.5(d): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been</p>	<p><b>CPC § 261.5(c): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 261.5(d): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>
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<p><b><u>CRIME OF VIOLENCE under 18 U.S.C. § 16(a):</u></b></p> <p><b>CPC § 261.5(b): NO</b></p> <p>CPC § 261.5(b) is <u>categorically not</u> a COV aggravated felony because its sentence will never exceed 1 year. <i>See</i> INA § 101(a)(43)(A).</p> <p><b>CPC § 261.5(c): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No</p> <p><i>Valencia v. Gonzales</i>, 439 F.3d 1046, 1054 (9th Cir. 2006) (holding that a violation of CPC § 261.5(c) is <u>not categorically</u> a crime of violence because it does not have “as an element the use, attempted use, or threatened use of [violent] physical force against the person or property of another”).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 261.5(d): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point.</p>		<p>convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	
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<p>Proceed to Modified Categorical? No published Ninth Circuit or Board case on point.</p> <p><b><u>CRIME OF VIOLENCE under 18 U.S.C. § 16(b): NO</u></b></p> <p>Categorical Match? N/A</p> <p>Divisible? N/A</p> <p>Proceed to Modified Categorical? N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague.</p> <p><i>See Sessions v. Dimaya</i>, 138 S.Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony.</p>			
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
<p><b><u>CRIME OF VIOLENCE under 18 U.S.C. § 16(a):</u></b></p> <p><b>Section 261.5(c)</b></p> <p>In <i>Valencia v. Gonzales</i>, the Court mentions the “modified” categorical approach in the context of CPC § 261.5(c). 439 F.3d at 1054. However, it does not address whether this subsection is divisible. Thus, it is unclear whether the modified categorical approach would necessarily apply.</p>		<p><b>PSC under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b></p> <p>(b) (6) (9th Cir. Jan. 17, 2019) (upholding the Board’s finding (without citing to a specific subsection) that CPC § 261.5 in the respondent’s case constituted a particularly serious crime)</p> <p><b>CPC § 261.5(c):</b></p> <p>In <i>Afridi v. Gonzales</i>, the Ninth Circuit held that a respondent’s conviction for engaging in</p>	<p>Note: The Board defines a crime of child abuse broadly as “any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child’s physical or mental well-being, including sexual abuse or exploitation.” <i>Matter of Velazquez-Herrera</i>, 24 I&amp;N Dec. 503, 512 (BIA 2008). Because CPC § 261.5 is a strict liability crime, it most likely</p>

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		<p>sexual intercourse with a seventeen-year-old girl, in violation of CPC § 261.5(c), was not “facially particularly serious” but may have constituted a PSC under the factors articulated by the Board in <i>Matter of Frentescu</i>. 442 F.3d 1212, 1221 (9th Cir. 2006), <i>overruled on other grounds</i> by <i>Estrada-Espinoza v. Mukasey</i>, 546 F.3d 1147 (9th Cir. 2008). However, because the Board failed to engage in a case-specific analysis, the Ninth Circuit remanded the case for the Board to consider the facts and circumstances of the respondent’s crime in determining whether his conviction under CPC § 261.5(c) constituted a PSC. <i>See id.</i> Here, the facts indicated that the respondent, a thirty-two-year old man, “had sexual intercourse with a seventeen-year-old girl he picked up on the side of the road who said she would have sex with him for sixty dollars.” <i>Id.</i> at 1214–15.</p> <p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	<p>falls outside this definition due to a lack of scienter.</p>
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**Cal. Penal Code § 273a(a) (felony child endangerment):** Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered . . . (2018).

### Maximum Sentence:

CPC § 273a(a): (state prison) six years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse</b> § 237(a)(2)(E)(i)
<b>CRIME OF VIOLENCE: NO</b>  <b>Under 18 U.S.C. § 16(a): NO</b>  <u>Categorical Match?</u> No  <i>Ramirez v. Lynch</i> , 810 F.3d 1127, 1134 (9th Cir. 2016) (holding that CPC § 273a(a) is not a categorical match to the federal generic definition of a crime of violence because it criminalizes conduct that “would not necessarily entail any affirmative ‘use’ of force, and encompasses passive, negligent conduct.”).  <u>Divisible?</u> No  <i>Ramirez v. Lynch</i> , 810 F.3d 1127, 1138 (9th Cir. 2016) (holding that CPC § 273a(a) is indivisible because the different levels of mens rea are alternate theories or means, not alternate elements, of committing a “single indivisible crime”).  <u>Proceed to Modified Categorical?</u> No  <i>Ramirez v. Lynch</i> , 810 F.3d 1127, 1138 (9th Cir. 2016).	<b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.	<b>PSC:</b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO</b>	<b>CRIME OF CHILD ABUSE: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.

## CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

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<p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>		<p><b>PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
	<p>Neither the Ninth Circuit nor the Board has held that CPC § 273a(a) is a CIMT, and other case law related to this analysis is somewhat conflicting. <i>Compare Guerrero de Nodahl v. INS</i>, 407 F.2d 1405, 1406–07 (9th Cir. 1969) (internal quotation marks omitted) (finding that CPC § 273d, which contains a similar “willful” intent provision as CPC § 273a(a), constitutes a CIMT, because “inflicting cruel or inhuman corporal punishment or injury upon a child is so offensive to American ethics that the fact that it was done purposely or willingly (the California definition of willful) ends debate on whether moral turpitude was involved.”), <i>with People v. Sanders</i>, 10 Cal. App. 4th 1268, 1275 (1992) (finding that in the context of whether a crime can be used for impeachment purposes CPC § 273a(a) is not a CIMT because it can be committed by “wholly passive conduct” including extreme neglect), <i>and</i> Mahmood Shafiee, A024 107 368 (BIA Mar. 2, 2007) (“[I]t appears that . . . California Penal Code § 273a(a) for child endangerment does not constitute a crime involving moral turpitude) (citing <i>Sanders</i>, 10 Cal. App. 4th at 1274).</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	<p><b><u>CRIME OF CHILD ABUSE:</u></b></p> <p><i>See Martinez-Cedillo v. Sessions</i>, 896 F.3d 979, 983 (9th Cir. 2018) (holding that CPC § 273a(a) is a categorical match to the definition of child abuse articulated in <i>Matter of Soram</i>, 25 I&amp;N Dec. 378, 383 (BIA 2010) because it requires “circumstances or conditions likely to produce great bodily harm or death”), <i>reh’g en banc granted sub nom. Martinez-Cedillo v. Barr</i>, No. 14-71742, 2019 WL 1236344 (9th Cir. Mar. 18, 2019) (unpublished). Note that on March 18, 2019, the Ninth Circuit voted to rehear <i>Martinez-Cedillo v. Sessions</i> en banc. <i>See Martinez-Cedillo v. Barr</i>, No. 14-71742, 2019 WL 1236344 (9th Cir. Mar. 18, 2019). Thus, <i>Martinez-Cedillo</i> may no longer be cited as precedent within the Ninth Circuit.</p> <p><i>Cf. Fregozo v. Holder</i>, 576 F.3d 1030, 1035 (9th Cir. 2009) (holding that CPC § 273a(b) is not a crime of child abuse, and expressly distinguishing CPC § 273a(a) from CPC § 273a(b) by emphasizing that “unlike the analogous felony provision, California Penal Code section 273a(a), the misdemeanor provision does not require that the perpetrator</p>



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			<p><i>actually</i> endanger the health or safety of the child at all”).</p> <p><u>Retroactivity of federal definition</u> There appears to be a split amongst the Ninth Circuit judges regarding whether the federal definition of a crime of child abuse—including criminally negligent conduct—set forth in <i>Matter of Velasquez-Herrera</i>, 24 I&amp;N Dec. 503 (BIA 2008) can be applied retroactively to convictions before 2008. <i>Compare Martinez-Cedillo</i>, 896 F.3d at 994 (holding that the <i>Soram</i> definition, including criminally negligent conduct is retroactive, without limiting its retroactivity), <i>with Sanghera v. Sessions</i>, 736 F. App’x 175, 177 (9th Cir. 2018) (concluding that the federal definition of child abuse under <i>Velasquez-Herrera</i> is not retroactive, and therefore, does not apply to convictions before 2008).</p>
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<b>Cal. Penal Code § 273a(b) (felony child endangerment):</b> Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered . . . (2018).			
<b>Maximum Sentence:</b> CPC § 273a(b): six months			
<b>Aggravated Felony?</b>	<b>Crime Involving Moral Turpitude?</b>	<b>Particularly Serious Crime?</b>	<b>Other Inadmissibility or Removability Grounds?</b> i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse</b> § 237(a)(2)(E)(i)
<b><u>CRIME OF VIOLENCE: NO</u></b>  <b>Under 18 U.S.C. § 16(a): NO</b>  CPC § 273a(b) is <u>categorically not</u> a COV aggravated felony because it is a misdemeanor and the sentence will never exceed 1 year. <i>See</i> INA § 101(a)(43)(A).  <b>Under 18 U.S.C. § 16(b): NO</b>  A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i> , 138 S. Ct 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.	<b><u>PSC:</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”)  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>	<b><u>CRIME OF CHILD ABUSE: NO</u></b>  <u>Categorical Match?</u> No  <i>Fregozo v. Holder</i> , 576 F.3d 1030, 1038 (9th Cir. 2009) (holding that CPC § 237a(b) is not categorically a “crime of child abuse” because it includes conduct that “creates only the bare potential for nonserious harm”).  Be aware that this case was decided before <i>Descamps v. United States</i> , 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No Ninth Circuit or Board case on point.

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<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
		Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	<i>Matter of Mendoza Osorio</i> , 26 I&N Dec. 703, 711 (BIA 2016) (citing <i>Fregozo v. Holder</i> , 576 F.3d 1030 (9th Cir. 2009) and agreeing, in dicta, that a conviction under CPC § 237a(b) did not categorically constitute a crime of child abuse).

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 273d: Willful Corporal Injury upon a Child</b>				
Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Child Abuse</b> 237(a)(2)(E)(i)	CPC § 273d(a): <b>6 years</b>  CPC § 273d(b) (recidivist): <b>4 year</b> enhancement EXCEPT no additional term imposed on the basis of a prior term imposed under the provisions of § 1170(h) that is served prior to a period of 10 years in which the defendant is not convicted of a felony or imprisoned under § 1170(h).	<b>Crime of Violence under 18 U.S.C. §16(a): (b) (5)</b>  There is no case law on point; however, the statute requires willful infliction of cruel or inhuman corporal punishment upon a child or injury resulting in traumatic condition. This language seems to comport with the definition of “crime of violence” in 18 U.S.C. § 16(a) by analogy to case law on violations of § 273.5 (see below).  The respondent must also have been sentenced to <b>one year or more</b> for the conviction to be an aggravated felony.  <b>Crime of Violence under 18 U.S.C. §16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	<b>YES</b>  Violation of § 273d is <u>categorically</u> a CIMT. <i>Guerrero de Nodahl v. INS</i> , 407 F.2d 1405, 1406-07 (9th Cir. 1969); <i>accord Fernandez-Ruiz v. Gonzales</i> , 468 F.3d 1159, 1166 (9th Cir. 2006)  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.	<b>Crime of Child Abuse: YES</b>  Violation of § 273d <u>categorically</u> is “crime of child abuse” because the statute requires willful infliction of cruel or inhuman corporal punishment upon a child or injury resulting in traumatic condition. <i>Matter of Velazquez-Herrera</i> , 24 I&N Dec. 503, 511-12 (BIA 2008) (defining “crime of child abuse” to include, among other things, “infliction on a child of physical harm, even if slight; mental or emotional harm, including acts injurious to morals”); <i>Matter of Eleodoro Salinas Cruz</i> , 2005 WL 649127 (9th Cir. 2005) (unpublished).  NOTE: If the conviction pre-dates September 30, 1996, then the provisions in INA § 237(a)(2)(E) do NOT apply. <i>Mota v. Mukasey</i> , 432 F.3d 1165 (9th Cir. 2008).

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 273.5: Willful Infliction of Corporal Injury</b> Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition is guilty.				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Domestic Violence</b> 237(a)(2)(E)(i)	CPC § 273.5: <b>6 years</b>	<b>Crime of Violence under 18 U.S.C. §16(a): YES</b>  A violation of § 273.5 is <u>categorically</u> a crime of violence as defined in 18 U.S.C. § 16(a) because a person cannot be convicted without using physical force of such violence as to cause traumatic injury. <i>Matter of Perez Ramirez</i> , 25 I&N Dec. 203, 208 (BIA 2010); <i>Banuelos-Ayon v. Holder</i> , 611 F.3d 1080, 1083 (9th Cir. 2010). HOWEVER, a § 273.5 conviction is only an aggravated felony if the respondent was sentenced to <b>at least one year of imprisonment</b> . See INA § 101(a)(43)(F).  <b>Crime of Violence under 18 U.S.C. §16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	(b) (5)  Violation of § 273.5 is <u>not categorically</u> a CIMT because a conviction does not necessarily require a special relationship of trust between the perpetrator and the victim. The statute is divisible as to identity of the victim, so the modified categorical approach may be employed to determine if the victim shared a “special relationship of trust” with the perpetrator (i.e. spouse, former spouse, parent of perpetrator’s child). <i>Cervantes v. Holder</i> , 772 F.3d 583 (9th Cir. 2014); <i>Morales-Garcia v. Holder</i> , 567 F.3d 1058, 1065 (9th Cir. 2009).  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.	<b>Crime of Domestic Violence: YES</b>  The Ninth Circuit has held that a violation of § 273.5 is <u>categorically</u> a crime of domestic violence. <i>Carrillo v. Holder</i> , 781 F.3d 1155, 1159 (9th Cir. 2015).

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 273.6: Intentional Violation of a Protective Order</b> Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code.				
<b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Violation of a Protection Order</b> 237(a)(2)(E)(ii)	CPC §273.6(a): <b>1 year</b> in county jail	<b>NO</b>  First, it is unclear which aggravated felony would apply. Secondly, the maximum sentence is one year, and thus it does not qualify as a generic felony (which requires <i>more than</i> one year), and it is not characterized as a felony under state law. <i>See Covarrubias Teposte v. Holder</i> , 632 F.3d 1049, 1052 (9th Cir. 2011).	(b) (5)   	<b>Violation of a Protection Order: (b) (5)</b>  Whether a violation of a protection order renders a respondent removable under INA § 237(a)(2)(E)(ii) is <u>not</u> governed by the categorical approach. <i>See Matter of Obshatko</i> , 27 I&N Dec. 173, 176 (BIA 2017). Although the Board has expressly stated that the Court also may not use a circumstance-specific approach in determining whether a respondent is removable under this section, it nevertheless has acknowledged that the approach that should be used may have the same practical effect as a circumstance-specific one. <i>See id.</i>  Thus, in order to determine whether CPC § 273.6 constitutes an offense under INA § 237(a)(2)(E)(ii), the Court must consider the “probative and reliable evidence” to decide (1) whether a State court “determine[d]” that the respondent “has engaged in conduct that violates the portion of a protection order that involve[d] protection against credible threats of violence, repeated harassment, or bodily injury” and (2) whether the order was “issued for the purpose of preventing violent or threatening acts of domestic violence.” INA § 237(a)(2)(E)(ii); <i>see Obshatko</i> , 27 I&N Dec. at 177. Reliable evidence includes conviction documents, as well as any other



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			<p>(b) (6)</p> <p>(b) (6)</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	<p>evidence that is probative and fundamentally fair. <i>Id.</i> at 176.</p> <p>Previously, the Ninth Circuit and the Board held that a court's determination that the respondent violated the portion of the protective order that deals only with keeping a specified distance from another individual (a "stay-away" provision) qualifies under § 237(a)(2)(E)(ii). See <i>Szalai v. Holder</i>, 572 F.3d 975, 9821-82 (9th Cir. 2009); <i>Matter of Strydom</i>, 25 I&amp;N Dec. 507, 510 (BIA 2011). The Ninth Circuit has also allowed the possibility that a violation of the portion of the order that involves payment for child care, would <i>not</i> qualify. See <i>Szalai</i>, 572 F.3d at 980.</p>
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## Cal. Penal Code § 288 (lewd or lascivious acts):

(a) Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony...

(b)(1) A person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony...

(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony...

(c)(1) A person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense...

(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense...

### Maximum Sentence:

CPC § 288(a): (state prison) eight years

CPC § 288(b)(1): (state prison) ten years

CPC § 288(b)(2): (state prison) ten years

CPC § 288(c)(1): (state prison) three years

CPC § 288(c)(2): (state prison) three years

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Sexual Abuse of a Minor:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(A)  <b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse:</b> § 237(a)(2)(E)(i)
<b><u>SEXUAL ABUSE OF A MINOR:</u></b>  CPC § 288(a): Yes  <i>See United States v. Baron-Medina</i> , 187 F.3d 1144, 1147 (9th Cir. 1999) (holding, in the context of the Federal Sentencing Guidelines, that a conviction under CPC § 288(a) was an aggravated felony because it constituted “sexual abuse of a minor” within the meaning of 8 U.S.C. § 1101(a)(43)(A)).	<b><u>CIMT:</u></b>  CPC § 288(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC:</u></b>  CPC § 288(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated	<b><u>CRIME OF CHILD ABUSE:</u></b>  CPC § 288(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point

# CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

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Castro</i>, 607 F.3d 566, 567–68 (9th Cir. 2010) (finding in the context of the Federal Sentencing Guidelines that CPC</p>	<p><b>CPC § 288(b)(1): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(b)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(c)(1): NO</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><i>See Menendez v. Whitaker</i>, 908 F.3d 467, 474 (9th Cir. 2018) (holding that CPC § 288(c)(1) contains a “single, indivisible set of elements”).</p> <p><u>Proceed to Modified Categorical?</u> No</p> <p><i>See Menendez v. Whitaker</i>, 908 F.3d 467, 474 (9th Cir. 2018).</p>	<p>felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><b>CPC § 288(b)(1): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><b>CPC § 288(b)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who</p>	<p><b>CPC § 288(b)(1): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(b)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(c)(1): NO</b></p> <p><u>Categorical Match?</u> No</p> <p><i>See Menendez v. Whitaker</i>, 908 F.3d 467, 474–75 (9th Cir. 2018) (holding that CPC § 288(c)(1) is <u>not categorically</u> a crime of child abuse under INA § 237(a)(2)(E)(i) because it is broader than the federal definition in two ways). In <i>Menendez</i>, the Ninth Circuit found that CPC § 288(c)(1) is overbroad for the following reasons:</p> <ol style="list-style-type: none"> <li>1) The federal definition requires that a defendant act with a <i>mens rea</i> of at least criminal negligence, while CPC § 288(c)(1) only requires that a defendant act “willfully.”</li> <li>2) CPC § 288(c)(1) does not require “proof of actual injury, or a ‘sufficiently high risk of harm,’ as an element of the offense.”</li> </ol> <p><i>See id.</i></p>
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<p>§ 288(c)(1) is <u>categorically not</u> a crime of violence because it is broader than the federal generic offense of “sexual abuse of a minor”).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(c)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b><u>CRIME OF VIOLENCE under 18 U.S.C. § 16(a):</u></b></p> <p><b>CPC § 288(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p>	<p><b>CPC § 288(c)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p>has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><b>CPC § 288(c)(1): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”).</p> <p><b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under Matter of Frentescu, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>CPC § 288(c)(2): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>
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<b>Unpublished Cases:</b>			
<p><i>See Dimas v. Holder</i>, 524 F. App'x. 368, 370 (9th Cir. 2013) (holding that a respondent's conviction under CPC § 288(a) was <u>categorically</u> "sexual abuse of a minor" under INA § 101(a)(43)(A) and thus an</p>	<p>(b) (6)</p> <p>2008 WL 2401053, at *2 (BIA May 23, 2008) (unpublished) (finding that a</p>	<p><i>See, e.g., Ramirez v. Sessions</i>, 722 F. App'x. 734, 734 (9th Cir. 2018) (finding that the BIA did not abuse its discretion in determining that a respondent's conviction under CPC § 288(a) was a particularly</p>	



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<p>aggravated felony under INA § 237(a)(2)(A)(iii)).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><i>See Pineda Apoldo v. Ashcroft</i>, 111 F. App'x. 456, 457 (9th Cir. 2004) (holding that CPC § 288(c) is an aggravated felony under INA § 237(a)(2)(A)(iii) because a violation of the statute qualifies as "sexual abuse of a minor" under INA § 101(a)(43)(A)).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p>	<p>respondent's conviction under CPC § 288(a) qualified as a CIMT).</p> <p>(b) (6), 2004 WL 1398616, at *1 (BIA Mar. 12, 2004) (unpublished) (noting that the respondent's conviction under CPC § 288(a) was a CIMT).</p> <p>Be aware that these cases were decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore they do not address whether the statute could be divisible.</p>	<p>serious crime that rendered him ineligible for withholding of removal).</p> <p><i>Landaverde v. Lynch</i>, 632 F. App'x. 912, 914 (9th Cir. 2015) (finding that the BIA did not abuse its discretion by determining that the respondent's conviction under CPC § 288(a) was a particularly serious crime based on the <i>Frentescu</i> factors).</p>	
<b>Relevant to Analysis:</b>			
	<p><i>See Molina v. Sessions</i>, 691 F. App'x. 409, 410 (9th Cir. 2017) (noting that the respondent acknowledged that his conviction under CPC § 288 was a CIMT).</p> <p><i>See Schoeps v. Carmichael</i>, 177 F.2d 391, 394 (9th Cir. 1949) (finding that a respondent's conviction under New York Penal Law for committing acts of a "loathsome nature upon the sexual organs of a seven-year old girl," clearly involved moral turpitude and noting that the respondent was also convicted under CPC § 288 for committing acts, which the Ninth Circuit considered, were "more repulsive in nature" than the respondent's initial offense in New York).</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.</p>	

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 289(a): Forcible Acts of Sexual Penetration</b> Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.				
<b>Aggravated Felony: Sexual Abuse of a Minor</b> 237(a)(2)(A)(iii)/ 101(a)(43)(A)  <b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Child Abuse</b> 237(a)(2)(E)(i)	CPC § 289(a)(1)(A): <b>8 years</b>  CPC § 289(a)(1)(B): <b>12 years</b> , if the child is under 14 years of age  CPC § 289(a)(1)(C): <b>10 years</b> , if the child is between 14 to 18	<b>Crime of Violence under 18 U.S.C. § 16(a): NO</b>  Section 289(a) is not categorically a crime of violence because it does not require physical force. Further, the statute is indivisible regarding the means by which the defendant accomplished the act, so the modified-categorical analysis is inappropriate. <i>United States v. Espinoza-Morales</i> , 621 F.3d 1141 (9th Cir. 2010).  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).	(b) (5)   <i>People v. McCoy</i> , 215 Cal. App. 4th 1510 (2013).  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.	<b>Crime of Domestic Violence: NO</b>  To qualify as a crime of domestic violence, it must be a crime of violence involving a victim with a domestic relationship listed in section 237(a)(2)(E)(i).  The Ninth Circuit has held that the modified categorical approach can be used to determine whether a domestic relationship existed. <i>Cisneros-Perez v. Gonzales</i> , 465 F.3d 386, 392 (9th Cir. 2006). However, that decision predated <i>Descamps</i> , and this statute notably lacks any domestic relationship <i>element</i> , so it would be inappropriate to look to the facts.

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
<p><b>Cal. Penal Code § 290(b): Sex Offender Registration Act:</b>                      Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.</p>			
<p><b>CIMT 212(a)(2)(A)(i)(I)</b>                      237(a)(2)(A)(i)</p>	<p>CPC § 290.018(a):  <b>1 year</b></p> <p>CPC § 290.018(b):  <b>3 years</b>, if repeated violations of registration requirements or failure to register after a felony conviction requiring registration</p>	<p><b>NO</b></p> <p>It is not clear which aggravated felony would apply.</p>	<p>(b) (5)</p> <p>The Board has held that violating § 290 is categorically a CIMT. <i>Matter of Tobar-Lobo</i>, 24 I&amp;N Dec. 143, 146-47 (BIA 2007). The Ninth Circuit declined to follow the Board's holding in <i>Plasencia-Ayala v. Mukasey</i>, 516 F.3d 738, 749 (9th Cir. 2008), finding that a Nevada statute for failure to register was missing the requisite baseness or depravity to constitute a CIMT. The Ninth Circuit later overruled its decision for failing to accord <i>Chevron</i> deference. <i>Marmolejo-Campos v. Holder</i>, 558 F.3d 903, 912 (9th Cir. 2009). <i>Marmolejo</i> only overruled <i>Plasencia-Ayala</i> to the extent that it employed a <i>de novo</i> standard of review. See <i>Pannu v. Holder</i>, 639 F.3d 1225, 1228 (9th Cir. 2011).</p> <p>In <i>Pannu</i>, the Ninth Circuit asked the Board to reconsider <i>Tobar-Lobo</i> in light of <i>Silva-Trevino</i>'s intent requirement. 639 F.3d at 1229. The Board remanded the case to the IJ and implied that the modified categorical approach would be necessary, and has not yet issued a published opinion regarding failure to register. See <i>Gursharan Sing Pannu</i>, 2011 WL 6965202 (BIA 2011) (unpublished). Although the Ninth Circuit has since overruled <i>Silva-Trevino</i>, it took issue only with the Attorney General's holding that courts could look at documents outside of the record of conviction when finding moral turpitude, and did not address the scienter requirement defined in <i>Silva-Trevino</i>. See <i>Olivas-Motta v. Holder</i>, 716 F.3d 1199 (9th Cir. 2013). Thus, the Ninth Circuit's suggestion that failure to register may not have the requisite scienter to be a CIMT may still be a viable argument. If the statute is missing the element of baseness or depravity required to be a CIMT, the modified categorical approach is not appropriate, and the conviction will categorically not be a CIMT.</p> <p>Several other circuits have indicated that failure to register is <u>not categorically</u> a CIMT. See <i>Totimch v. Attn'y Gen. of U.S.</i>, 666 F.3d 109,166 (3d Cir. 2012) (holding that Minnesota's failure to register statute is not categorically a CIMT); <i>Efagene v. Holder</i>, 642 F.3d 918, 926 (10th Cir. 2011) (holding that Colorado's statute is categorically not a CIMT); <i>Mata-Guerrero v. Holder</i>, 627</p>

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[Brittany.Aldredge@coir.usdoj.gov](mailto:Brittany.Aldredge@coir.usdoj.gov) (b) (6)

			<p>F.3d 256, 261 (7th Cir. 2010) (remanding to determine whether Wisconsin's statute constitutes a CIMT).</p> <p>Nevertheless, the Board's decision in <i>Tobar-Lobo</i> remains valid precedent, (b) (5)</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>
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<b>Cal. Penal Code § 311.3 (sexual exploitation of child):</b> A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct. (2018)			
<b>Maximum Sentence:</b> CPC § 311.3(d): county jail (one year)			
Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Sexual Abuse of a Minor:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(A)  <b>Child Pornography:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(I)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse:</b> § 237(a)(2)(E)(i)
<b>SEXUAL ABUSE OF A MINOR: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.  <b>CHILD PORNOGRAPHY: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.	<b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b>PSC: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	<b>CRIME OF CHILD ABUSE: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point



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Proceed to Modified Categorical? No published Ninth Circuit or Board case on point.			
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
<i>See United States v. Reinhart</i> , 893 F.3d 606, 619–20 (9th Cir. 2018) (finding, in the context of the Federal Sentencing Guidelines, that CPC § 311.3 is categorically broader than the federal crime of sexual exploitation of a minor under 18 U.S.C. § 2252 and indivisible because it includes “defecation or urination for the purpose of sexual stimulation of the viewer,” which the Ninth Circuit found was one of many “ways” in which a depiction might show a minor engaged in sexual conduct).	CPC § 311.3 is likely a categorical CIMT because it is a sexual offense against a protected class of victim—minors under the age of 18. <i>See Gonzalez-Cervantes v. Holder</i> , 709 F.3d 1265, 1267 (9th Cir. 2013) (finding that sexual offenses constitute CIMTs when there is either “(1) actual harm or (2) a protected class of victims”).	<i>See Matter of R-A-M-</i> , 25 I&N Dec. 657, 662 (BIA 2012) (holding that a respondent’s conviction for possession of child pornography under CPC § 311.11(a) was a particularly serious crime given the nature of the offense and the specific facts and circumstances of the crime). In <i>Matter of R-A-M-</i> , the Board noted that child pornography is, “by its nature, a serious offense because it victimizes some of the most vulnerable members of society and can have life-long adverse effects.” <i>Id.</i>  Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	<i>See Matter of Velazquez-Herrera</i> , 24 I&N Dec. 503, 503 (BIA 2008) (holding that the term “crime of child abuse” should be interpreted broadly as any offense involving an “intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child’s physical or mental well-being, including sexual abuse or exploitation”). In <i>Matter of Velazquez-Herrera</i> , the Board suggested that the definition of a crime of child abuse would necessarily include acts that induce a child to engage in pornography or other sexually explicit conduct, as well as acts that involve the use or exploitation of a child as an object of sexual gratification. <i>See id.</i>



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**Cal. Penal Code § 311.11 (possession of child pornography):** Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4 (2018)

## Maximum Sentence:

CPC § 311.11(a): (county jail or state prison) one year

CPC § 311.11(b): (state prison) six years

CPC § 311.11(c): (state prison) five years or (county jail) one year

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Sexual Abuse of a Minor:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(A)  <b>Child Pornography:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(I)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Child Abuse:</b> § 237(a)(2)(E)(i)
<b>SEXUAL ABUSE OF A MINOR: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point.  <u>Divisible?</u> No published Ninth Circuit or Board case on point.  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point.  <b>CHILD PORNOGRAPHY: NO</b>  <u>Categorical Match?</u> No  <i>See Chavez-Solis v. Lynch</i> , 803 F.3d 1004, 1008–09 (9th Cir. 2015) (holding that CPC § 311.11(a) is categorically broader than the	<b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published case on point  <u>Divisible?</u> No published case on point  <u>Proceed to Modified Categorical?</u> No published case on point	<b>PSC: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under Matter of Frentescu</b> , 18 I&N Dec. 244 (BIA 1982): <i>See Matter of R-A-M-</i> , 25 I&N Dec. 657, 662 (BIA 2012) (holding that a respondent’s conviction for possession of child pornography under CPC § 311.11(a) was a particularly serious crime given the	<b>CRIME OF CHILD ABUSE: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point

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<p>federal crime relating to child pornography, 18 U.S.C. § 2252, because California’s definition of “sexual conduct,” which is referenced in the statute, includes “any touching” on “any part” of a child’s body with the intent of arousing sexual desires, an act that the federal definition of “sexually explicit conduct” does not include).</p> <p><u>Divisible?</u> No</p> <p><i>See Chavez-Solis v. Lynch</i>, 803 F.3d 1004, 1012–13 (9th Cir. 2015) (finding that CPC § 311.11(a)’s definition of “sexual conduct” under CPC § 311.4(d) is indivisible and thus the statute as a whole is categorically overbroad because this definition includes conduct which is not included in the federal counterpart of “sexually explicit conduct.”).</p> <p><u>Proceed to Modified Categorical?</u> No</p> <p><i>See Chavez-Solis v. Lynch</i>, 803 F.3d 1004, 1013 (9th Cir. 2015).</p>		<p>nature of the offense and the specific facts and circumstances of the crime). In <i>Matter of R-A-M-</i>, the Board noted that child pornography is, “by its nature, a serious offense because it victimizes some of the most vulnerable members of society and can have life-long adverse effects.” <i>Id.</i></p>	
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
<p><i>See United States v. Reinhart</i>, 893 F.3d 606, 618 (9th Cir. 2018) (citing <i>Chavez-Solis v. Lynch</i>, 803 F.3d 1004 (9th Cir. 2015) and holding that, in the context of the Federal Sentencing Guidelines, CPC § 311.11 is <u>categorically broader</u> than the federal crime of sexual exploitation of a minor under 18 U.S.C. § 2252 and indivisible because California’s definition of “sexual conduct” is broader than the federal definition of “sexually explicit conduct” and is not divisible).</p>	<p><i>See e.g., Matter of Olquin-Rufino</i>, 23 I&amp;N Dec. 896, 897–98 (BIA 2006) (finding that a respondent’s conviction of possession of child pornography under section 827.071(5) of the Florida Statutes was a CIMT because possession of child pornography is a “serious offense to our ethics and accepted moral standards” and is “morally</p>	<p><i>See Torres v. Lynch</i>, 608 F. App’x 493, 494 (9th Cir. 2015) (unpublished) (noting that the Court and the Board both determined that the respondent’s conviction for possession of child pornography constituted a particularly serious crime based on the Board’s prior decision in <i>Matter of Ram</i>, 25 I&amp;N Dec. 657 (BIA 2012) and declining to address whether the <i>Frentescu</i> factors were properly applied because this was a discretionary determination over which the Ninth Circuit lacked jurisdiction.)</p> <p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the</p>	

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	reprehensible and intrinsically wrong”);  <i>United States v. Santacruz</i> , 563 F.3d 894, 897 (9th Cir. 2009) (holding that knowing possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), is a CIMT “[b]ecause possession of child pornography offends conventional morality and visits continuing injury on children,” and therefore is “vile, base, or depraved and...violates societal moral standards.”).	“aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?
<b>Cal. Penal Code § 314(1): Indecent Exposure</b> Every person who willfully and lewdly . . . (1) Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby . . . is guilty of a misdemeanor. [A person who performs the act] after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in <a href="#">Section 635 of the Vehicle Code</a> , or the inhabited portion of any other building, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.			
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	CPC § 314: <b>1 year;</b> <b>3 years,</b> if recidivist conviction is a felony, punishable by county jail	<b>NO</b>  In addition to the fact that it is not clear which aggravated felony would apply, a misdemeanor conviction, unless committed in an inhabited dwelling or trailer coach, does not have the requisite period of imprisonment for most aggravated felonies.	<b>COULD HOLD EITHER WAY</b>  The Board and the Ninth Circuit disagree on whether § 314(1) is a categorical CIMT.  The Board has held that a violation of § 314(1) is <u>categorically</u> a CIMT because requires both “willful exposure of private parts” and “lewd intent.” <i>Matter of Cortes Medina</i> , 26 I&N Dec.79, 83 (BIA 2013).  In doing so, the Board rejected the Ninth Circuit’s holding in <i>Nunez v. Holder</i> , 594 F.3d 1124, 1135 (9th Cir. 2010), that a violation of § 314(1) is <u>not categorically a CIMT</u> because it does require an intent to harm, infliction of harm on the victim, or a protected class of victims.  <b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.

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**Cal. Penal Code § 417.3 (drawing or exhibiting firearm in the presence of motor vehicle occupant):** Every person who, except in self-defense, in the presence of any other person who is an occupant of a motor vehicle proceeding on a public street or highway, draws or exhibits any firearm, whether loaded or unloaded, in a threatening manner against another person in such a way as to cause a reasonable person apprehension or fear of bodily harm (2018)

### Maximum Sentence:

CPC § 417.3: three years in prison

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds?  i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE: YES</u></b>  <b>Under 18 U.S.C. § 16(a): YES</b>  <u>Categorical Match?</u> Yes  <i>See Bolanos v. Holder</i> , 734 F.3d 875, 878 (9th Cir. 2013) (holding that a violation of CPC § 417.3 is categorically a crime of violence under 18 U.S.C. § 16(a)).  <u>Divisible?</u> No  <i>See Bolanos v. Holder</i> , 734 F.3d 875, 878 (9th Cir. 2013) (rejecting the petitioner's argument that the Board should have applied the modified categorical approach to determine if his conviction under CPC § 417.3 was a crime of violence because, according to the Ninth	<b><u>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</u></b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b><u>PSC: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</u></b>  <b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT	N/A

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<p>Circuit, CPC § 417.3 contains a “single, indivisible set of elements.”).</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>			
<b>Unpublished Cases:</b>			
<b>Relevant to Analysis:</b>			
		<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.</p>	



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**Cal. Penal Code § 422 (criminal threats):** Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. (2018).

### Maximum Sentence:

CPC § 422(a): one year in prison

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds?
			i.e. headings include crime of child abuse; violation of a restraining order; violation of a law relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b><u>CRIME OF VIOLENCE: YES</u></b>  <b>Under 18 U.S.C. § 16(a): YES</b>  <u>Categorical Match?</u> Yes  <i>See Arellano Hernandez v. Lynch</i> , 831 F.3d 1127, 1132 (9th Cir. 2016) (holding that a conviction under CPC § 422 is categorically a crime of violence).  <u>Divisible?</u> N/A  <u>Proceed to Modified Categorical?</u> N/A  <b>Under 18 U.S.C. § 16(b): NO</b>  <u>Categorical Match?</u> N/A  <u>Divisible?</u> N/A  <u>Proceed to Modified Categorical?</u> N/A	<b><u>CIMT: YES</u></b>  <u>Categorical Match?</u> Yes  <i>Latter-Singh v. Holder</i> , 668 F.3d 1156, 1161–62 (9th Cir. 2012) (holding that a conviction under CPC § 422 is categorically a CIMT because (1) the underlying conduct of the threat is a CIMT, (2) the statute only criminalizes conduct that would result in “substantial harm,” and (3) the mens rea required constitutes “evil intent”).  Be aware that this case was decided before <i>Descamps v. United States</i> , 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.	<b><u>PSC: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</u></b>  <b>For purposes of asylum:</b>  Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b>  Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).	N/A

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<p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>	<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b></p> <p><i>See Latter-Singh v. Holder</i>, 668 F.3d 1156, 1163 (9th Cir. 2012) (affirming the Board's decision that the respondent's conviction under CPC § 422 constituted a particularly serious crime, based on the factors articulated by <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982)).</p>	
<b>Unpublished Cases:</b>			
<p><i>Dominguez-Manzo v. Holder</i>, 524 F. App'x 380, 382 (9th Cir. 2013) (affirming the Board's holding that the respondent's conviction under CPC § 422 was categorically an aggravated-felony crime of violence).</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><i>Singh v. Holder</i>, No. 09-72186, 2013 WL 4322180, at *759 (9th Cir. Aug. 16, 2013) (affirming the Board's decision that the respondent's conviction under CPC § 422 constituted an aggravated-felony crime of violence).</p>	<p><i>Dominguez v. Sessions</i>, 687 F. App'x 642, 643 (9th Cir. 2017) (noting that the respondent's conviction under CPC § 422 constituted a CIMT).</p> <p>(b) (6), 2008 WL 762770, at *2 (BIA Feb. 27, 2008) (unpublished) (holding that a violation of CPC § 422 is categorically a CIMT because it "not only requires the intentional transmission of threats, but also contemplates a degree of threat that causes another person to feel sustained fear").</p>	<p><i>Singh v. Holder</i>, No. 09-72186, 2013 WL 4322180, at *759 (9th Cir. Aug. 16, 2013) (noting that the respondent's conviction under CPC § 422 constituted a particularly serious crime based on the standard set forth in <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982)).</p> <p><i>Dominguez-Manzo v. Holder</i>, 524 F. App'x 380, 382 (9th Cir. 2013) (affirming the Board's holding that the respondent's conviction under CPC § 422 was a per se particularly serious crime that rendered him statutorily ineligible for asylum).</p>	

## CALIFORNIA CRIME CHART: CRIMES AGAINST THE PERSON

Managed by the Los Angeles Immigration Court AAs/JLCs; last edited by Brittany Aldredge on April 3, 2019

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### Relevant to Analysis:

*Rosales-Rosales v. Ashcroft*, 347 F.3d 714, 717 (9th Cir. 2003) (neglecting to address either the categorical or modified categorical approach but holding that a conviction under CPC § 422 meets the definition of a “crime of violence” under 18 U.S.C. § 16(a)).

*Latter-Singh v. Holder*, 668 F.3d 1156, 1162–63 (9th Cir. 2012) (citing its prior decision in *Rosales-Rosales v. Ashcroft*, 347 F.3d 714, 717 (9th Cir. 2003) and noting that the Ninth Circuit previously determined that the “full range of conduct” under CPC § 422 constituted an aggravated felony because the statute “necessarily requires a showing of willful violence”).

Be aware that this case was decided before *Descamps v. United States*, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.

*United States v. Villavicencio-Burrue*, 608 F.3d 556, 561 (9th Cir. 2010) (holding, in the context of the Federal Sentencing Guidelines, that CPC § 422 is categorically a crime of violence).

**Be aware of Cal. Penal Code § 18.5:** CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction. See *Matter of Velasquez-Rios*, 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.

Under *Mairena v. Barr*, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.

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**Cal. Penal Code § 646.9 (stalking):** Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.

**Maximum Sentence:**

CPC § 646.9(a): one year in prison;  
CPC § 646.9(b): four years in prison, if violated when there is a court order against the violator;  
CPC § 646.9(c)(1): five years in prison, if done after felony conviction;  
CPC § 646.9(c)(2): five years in prison, if done after felony conviction.

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Crime of Stalking</b> § 237(a)(2)(E)(i)  <b>Crime of Domestic Violence</b> § 237(a)(2)(E)(i)
<p><b>CRIME OF VIOLENCE:</b></p> <p><b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p>	<p><b>CIMT: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b>PSC: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p><b>Crime of Stalking: NO</b></p> <p><u>Categorical Match?</u> No</p> <p><i>Matter of Sanchez-Lopez</i>, 27 I&amp;N Dec. 256, 260 (BIA 2018) (holding that CPC § 646.9 is categorically not a crime of stalking because there is a realistic probability that it includes threats of nonphysical harm, making it overbroad).</p> <p><u>Divisible?</u> No</p> <p><i>See Sanchez-Lopez</i>, 27 I&amp;N Dec. at 260 (finding that the statute is categorically overbroad because the term “safety” in CPC § 646.9 is indivisible and thus the Court cannot look to the record of conviction to determine whether the respondent’s offense involved a threat that reasonably caused his victim to fear death or bodily injury, either personally or to her family) .</p> <p><b>Crime of Domestic Violence: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p>

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<p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>			<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>
<b>Unpublished Cases:</b>			
	<p><i>Raya-Moreno v. Holder</i>, 504 F. App'x 589, 591 (9th Cir. 2013) (citing the Board's decision in <i>Matter of Ajami</i>, 22 I&amp;N Dec. 949 (BIA 1999) and finding that a violation of CPC § 646.9 was categorically a CIMT because it requires malicious intent).</p>		
<b>Relevant to Analysis:</b>			
<p><b>Under 18 U.S.C. § 16(a):</b> Although there is no published Ninth Circuit or Board case on point, <i>see Malta-Espinoza v. Gonzales</i>, 478 F.3d 1080, 1082 (9th Cir. 2007) (referencing a prior decision under the Federal Sentencing guidelines, <i>United States v. Jones</i>, 231 F.3d 508 (9th Cir. 2000), and noting that the Board of Immigration Appeals declined to apply 18 U.S.C. § 16(a) to CPC § 646.9 because the requisite threat to safety under the statute is overbroad).</p>	<p><i>See Zavaleta-Gallegos v. INS</i>, 261 F.3d 951 (9th Cir. 2001) (noting that the petitioner did not contest that his crime for stalking under CPC § 646.9(b) was a CIMT).</p> <p><i>See also Matter of Ajami</i>, 22 I&amp;N Dec. 949, 952 (BIA 1999) (holding that a respondent's conviction for "aggravated stalking" under a Michigan statute was a CIMT under the modified categorical approach because the section of the statute under which he was convicted required a "vicious motive or a corrupt mind").</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.</p>	<p><b>Crime of Domestic Violence:</b> Although there is no published Ninth Circuit or Board case on point, <i>see Cisneros-Perez v. Gonzales</i>, 465 F.3d 386, 391 (9th Cir. 2006) (explaining that a crime of domestic violence encompasses a crime of violence plus a protected class of persons, such as a spouse).</p> <p>CPC § 646.9 is most likely categorically not a crime of domestic violence because it is also likely categorically not a crime of violence. <i>See, e.g., Malta-Espinoza v. Gonzales</i>, 478 F.3d 1080, 1082 (9th Cir. 2007) (suggesting that CPC § 646.9 is categorically not a crime of violence under 18 U.S.C. § 16(a)); <i>Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>

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	<p>misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction. See Matter of Velasquez-Rios, 27 I&amp;N Dec. 470, 472–73 (BIA 2018).</u> For more information, see end of this chart.</p>		
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<b>Cal. Penal Code § 647(a) (disorderly conduct/lewd or dissolute conduct):</b> Any individual who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view is guilty of disorderly conduct. (2018).			
<b>Maximum Sentence:</b> CPC § 19: (county jail) six months			
Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
N/A	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	N/A
<b>NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b>CIMT; NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).  <b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982):</b> NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.	N/A

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### Unpublished Cases:

	<p>See (b) (6) 2015 WL 7074215, at *1 (BIA Oct. 2, 2015) (unpublished) (holding that a respondent's conviction under CPC § 647(a) was <u>categorically not</u> a CIMT because there was no intent requirement). In this case, the Board specifically declined to follow its prior decision in <i>Matter of Alfonzo-Bermudez</i>, 12 I&amp;N Dec. 225 (BIA 1967), noting that even though the Board previously held that a violation of CPC § 647(a) was a CIMT, and that this decision was never overruled, <i>Alfonzo-Bermudez</i> did not "comport" with the categorical approach established by the Supreme Court in <i>Taylor v. United States</i>. See <i>id.</i> at *2.</p> <p>See (b) (6), 2007 WL 4699881, at *1–2 (BIA Nov. 8, 2007) (citing the Board's decision in <i>Matter of Mueller</i>, 11 I&amp;N Dec. 268 (BIA 1965) and finding that a respondent's conviction under former CPC § 647(a) (1998) does "not necessarily" constitute a CIMT because the statute itself is not limited to solicitation of prostitution).</p>		
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### Relevant to Analysis:

<p>CPC § 647(a) is most likely not an aggravated felony. In addition to the fact that it is not clear which aggravated felony would apply, this misdemeanor crime does not have the requisite period of imprisonment for most aggravated felonies.</p>	<p>See <i>Matter of Alfonzo-Bermudez</i>, 12 I&amp;N Dec. 225 (BIA 1967) (holding that CPC § 647(a) is a CIMT but neglecting to address either the categorical or modified categorical approaches).</p> <p>It is worth noting that <i>Alfonso-Bermudez</i> predated the categorical and modified categorical approaches set forth in <i>Taylor</i>, and the Board did not find the elements required for a conviction under CPC § 647(a) in this case. (b) (5)</p> <p>[REDACTED]; see also <i>Nunez v. Holder</i>, 594 F.3d 1124, 1132 (9th Cir. 2010) (citing <i>Alfonso-Bermudez</i> as an example of case that was a product of prior "contemporary sexual attitudes" that may no longer apply today).</p> <p>Compare to <i>Matter of Mueller</i>, 11 I&amp;N Dec. 268, 269–70 (BIA 1965) (holding that a conviction for "lewd and lascivious conduct" under a Wisconsin statute was not a CIMT because it did not require "a specific intent, a criminal intent, or any intent whatsoever").</p>	<p>Under <i>Mairena v. Barr</i>, 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.</p>	
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	<p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p>For purposes of determining whether CPC § 647(a) is a categorical match to a CIMT, it may be useful to identify the elements of the offense. In <i>People v. Rylaarsdam</i>, the Appellate Department in the Superior Court of the County of Los Angeles identified the elements of CPC § 647(a) as follows:</p> <ol style="list-style-type: none"> <li>1) Sexually motivated conduct by a defendant involving “the touching of the genitals, buttocks or female breast...”</li> <li>2) The conduct must be accompanied by a specific intent, i.e., “for ‘purposes of sexual arousal, gratification or affront’”</li> <li>3) The conduct must occur “in any public place, or any place open to the public or exposed to public view”</li> <li>4) The conduct must occur in the presence of another person or persons “who may be offended...”</li> <li>5) Defendant must know “or should know of the presence of persons who may be offended by his conduct.”</li> </ol> <p>139 Cal. App. 3d Supp. 1, 5–6 (Cal. App. Dep’t Super. Ct. 1982).</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>		
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## Cal. Penal Code § 647(b) (disorderly conduct/prostitution):

(b)(1) Any individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person, is guilty of disorderly conduct, a misdemeanor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) Any individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person, is guilty of disorderly conduct, a misdemeanor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(3) Any individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor is guilty of disorderly conduct, a misdemeanor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. (2018).

### Maximum Sentence:

CPC § 19: (county jail) six months

CPC § 647(m)(1): (county jail) one year (if the person who was solicited was a minor at the time of the offense and the defendant knew or should have known)

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
§ 101(a)(43)	§ 212(a)(2)(A)(i)(I)/ § 237(a)(2)(A)(i)	§ 208(b)(2)(ii)/§ 241(b)(3)(B)(ii)	<b>Prostitution and Commercialized Vice:</b> § 212(a)(2)(D)
<b>NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point	<b>CIMT: YES</b>  <u>Categorical Match?</u> YES <i>See Rohit v. Holder</i> , 670 F.3d 1085, 1089–90 (9th Cir. 2012) (holding that CPC § 647(b) is <u>categorically</u> a CIMT, and "soliciting an act of prostitution is not significantly less 'base, vile, and depraved' than engaging in an act of prostitution."").  Be aware that this case was decided before <i>Descamps v. United States</i> , 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.	<b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) ("[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.")  <b>For purposes of withholding:</b> Per se PSC if you find that the crime is an aggravated felony and the respondent was sentenced to at least 5 years of imprisonment. <i>See</i> INA § 241(b)(3)(B)(iv) ("[A]n	<b>§ 212(a)(2)(D)(i): Engaging in prostitution: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b>  <u>Categorical Match?</u> No published Ninth Circuit or Board case on point  <u>Divisible?</u> No published Ninth Circuit or Board case on point  <u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point

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	<p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p>	<p>alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT.</b></p>	<p><b><u>§ 212(a)(2)(D)(ii):</u></b> <b><u>Procuring prostitution: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b></p> <p><u>Categorical Match?</u> No</p> <p><i>See Matter of Gonzalez-Zoquiapan</i>, 24 I&amp;N Dec. 549, 553 (BIA 2008) (holding that CPC § 647(b) is categorically broader than INA § 212(a)(2)(D)(ii) because it includes “lewd acts,” while the federal definition of “prostitution” is limited to “sexual intercourse”). In <i>Gonzales-Zoquiapan</i>, the Board also held that CPC § 647(b) was not a categorical match to INA § 212(a)(2)(D)(ii) because the federal statute did “not cover acts of solicitation of prostitution on one’s own behalf,” suggesting that a conviction under CPC § 647(b) will never match the ground of inadmissibility under INA § 212(a)(2)(D)(ii). <i>See id.</i> at 554.</p> <p>Be aware that this case was decided before <i>Descamps v. United States</i>, 570 U.S. 254, 260 (2013) (holding that courts must determine if a statute is divisible before proceeding to the modified categorical approach) and therefore it does not address whether the statute could be divisible.</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b><u>§ 212(a)(2)(D)(iii):</u></b> <b><u>Engaging in an “unlawful commercialized vice”: NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</u></b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p>
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			Proceed to Modified Categorical? No published Ninth Circuit or Board case on point.
<b>Unpublished Cases:</b>			
	(b) (6), 2011 WL 400449, at *1 (BIA Jan. 25, 2011) (unpublished) (holding that a respondent's conviction under CPC § 647(b) was <u>categorically</u> a CIMT).		
<b>Relevant to Analysis:</b>			
CPC § 647(b) is most likely not an aggravated felony. In addition to the fact that it is not clear which aggravated felony would apply, this misdemeanor crime does not have the requisite period of imprisonment for most aggravated felonies.	<p><i>See Matter of Lambert</i>, 11 I&amp;N Dec. 340, 342 (1965) (holding that a respondent's convictions under a Florida statute for "renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation or prostitution" constituted CIMTs).</p> <p><i>See also Matter of W-</i>, 4 I&amp;N Dec. 401, 401-02, 04 (BIA 1951) (finding that a respondent's conviction under a city ordinance in Washington for "commit[ting] or offer[ing] or agree[ing] to commit any act of prostitution" was a CIMT).</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent's conviction.</u> <i>See Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472-73 (BIA 2018). For more information, see end of this chart.</p>	Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the "aggregate term of imprisonment" to determine whether a conviction constitutes a per se particularly serious crime.	



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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 647.6(a): Annoying or Molesting a Child under 18</b> (1) Any person who annoys or molests any child under 18 years of age is guilty. (2) Every person who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child under 18 years of age, which conduct, if directed towards a child under 18 years of age, would be a violation of this section, shall be punished				
<b>Aggravated Felony:</b> <b>Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)  <b>Aggravated Felony:</b> <b>Sexual Abuse of a Minor</b> 237(a)(2)(A)(iii)/ 101(a)(43)(A)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)  <b>Crime of Child Abuse</b> 237(a)(2)(E)(i)	CPC § 647.6(a)(1): <b>1 year</b>  CPC § 646.6(a)(2): <b>1 year ;</b> <b>6 years, if recidivist</b>	<b>Crime of Violence under 18 U.S.C. § 16(a): NO</b>  It cannot be a COV under § 16(a) because it does not have as an element the use, attempted use, or threatened use of physical force.  <b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).  <b>Sexual Abuse of a Minor: NO.</b>  A violation of § 647.6(a)(1) is <u>not categorically</u> sexual abuse of a minor because the conduct may involve neither harm nor injury to a minor, nor the touching of or by a minor. <i>U.S. v. Pallares-Galan</i> , 359 F.3d 1088, 1102 (9th Cir. 2004). Both “annoying” and “molesting” are overbroad and are missing elements of the generic offense of sexual abuse of a minor. As such, it is not appropriate to proceed to the modified categorical approach. <i>Id.</i>	<b>NO</b>  In <i>Nicanor-Romero</i> , the Ninth Circuit found that the words spoken need not be lewd or obscene, and, the element requiring that the defendant be “motivated by an unnatural or abnormal sexual interest” could be satisfied merely by the fact that the subject of interest was under the age of 18, and is not equivalent to specific intent. <i>Nicanor-Romero v. Mukasey</i> , 523 F.3d 992, 1003 (9th Cir. 2008), <i>overruled on other grounds by Marmolejo-Campos v. Holder</i> , 558 F.3d 903, 911 (9th Cir. 2009). Therefore, the court concluded that a violation of the statute is <i>not categorically</i> a CIMT. <i>Id.</i> at 1002.  (b) (5)  <i>See People v. Lopez</i> , 965 P2d 713, 717 (Cal.	<b>Crime of Child Abuse: (b) (5)</b> <b>*Note that subdivision (a)(2) proscribes conduct direct at adults, but that subdivision was added in 2006 to create a new crime.</b>  There is no case law on point, but the Board has construed the generic definition of child abuse to include any “intentional, knowing, reckless, or criminally negligent” act or omission that constitutes “maltreatment of a child.” <i>Matter of Soram</i> , 25 I&N Dec. 378, 381 (BIA 2010).  First, the Ninth Circuit has held that the <i>mens rea</i> required is not very high for purposes of a CIMT, yet the statute requires an act “motivated by an unnatural sexual interest or intent,” which the Ninth Circuit has held constitutes an intentional act under a different statute. <i>See Jimenez-Juarez v. Holder</i> , 635 F.3d 1169, 1171 (9th Cir. 2011). This <i>mens rea</i> thus likely satisfies the first prong of a crime of a child abuse.  Next, whether section 647.6 constitutes maltreatment is a closer question. The Ninth Circuit has held in the aggravated felony context that the proscribed acts are

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			<p>1998) (noting that “annoy” and “molest,” as referred to in § 647.6(a)(1) are synonyms meaning to “disturb, irritate, offend, injure”).</p> <p><b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i>, 27 I&amp;N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.</p>	<p>broad because “annoying” and “molest” are synonymous and mean to “disturb, irritate, offend, injure.” <i>People v. Lopez</i>, 965 P.2d 713, 717 (Cal. 1998) (b) (5)</p> <p><i>Soram</i>, 25 I&amp;N Dec. at 380.</p> <p>Finally, as the Board found instructive in <i>Soram</i>, <i>id.</i> at 383-86, <u>1</u>) California’s purpose in enacting this statute is similar to Congress’s in enacting section 237(a)(2)(E)(i), <u>2</u>) the culpability is arguably high, as “[t]here can be no normal sexual interest in any child and it is the sexual interest in the child that is the focus of the statute’s intent,” <i>In re D.G.</i>, 208 Cal. App. 4th 1562, 1571 (2012), and finally <u>3</u>) the type of conduct that would irritate a person sufficiently to result in a conviction is governed by a reasonableness standard, which limits the range of proscribed conduct. <i>People v. Brandao</i>, 203 Cal. App. 4th 436, 441, 446 (2012).</p> <p>(b) (5)</p>
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## Cal. Vehicle Code § 2800.2 (Driving in Willful or Wanton Disregard for Safety of Persons or Property While Fleeing from Police Officer):

(a) [When] a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property . . . (2018)

(b) For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs. (2018)

**Maximum Sentence:** one year

Aggravated Felony?	Crime Involving Moral Turpitude?	Particularly Serious Crime?	Other Inadmissibility or Removability Grounds? i.e. crime of child abuse; violation of a restraining order; offense relating to a controlled substance; trafficking in a controlled substance
<b>Crime of Violence:</b> § 237(a)(2)(A)(iii)/§ 101(a)(43)(F)	§ 212(a)(2)(A)(i)(I)/§ 237(a)(2)(A)(i)	§ 241(b)(3)(B)(ii)	N/A
<p><b><u>CRIME OF VIOLENCE:</u></b></p> <p><b>Under 18 U.S.C. § 16(a): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p> <p><u>Categorical Match?</u> No published Ninth Circuit or Board case on point</p> <p><u>Divisible?</u> No published Ninth Circuit or Board case on point</p> <p><u>Proceed to Modified Categorical?</u> No published Ninth Circuit or Board case on point</p> <p><b>Under 18 U.S.C. § 16(b): NO</b></p> <p><u>Categorical Match?</u> N/A</p> <p><u>Divisible?</u> N/A</p> <p><u>Proceed to Modified Categorical?</u> N/A</p> <p>A statute can never be a crime of violence under § 16(b) because it is unconstitutionally vague. <i>See Sessions v. Dimaya</i>, 138 S. Ct. 1204 (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no</p>	<p><b><u>CIMT: NO</u></b></p> <p><u>Categorical Match?</u> No</p> <p><i>See Ramirez-Contreras v. Sessions</i>, 858 F.3d 1298, 1306 (9th Cir. 2017) (holding that a violation of CVC § 2800.2 is not categorically a CIMT).</p> <p><u>Divisible?</u> No</p> <p><i>See Ramirez-Contreras</i>, 858 F.3d at 1306–1307 (9th Cir. 2017) (holding that CVC § 2800.2 is “clearly indivisible”).</p> <p><u>Proceed to Modified Categorical?</u> No</p> <p><i>See Ramirez-Contreras</i>, 858 F.3d at 1306–1307 (9th Cir. 2017).</p>	<p><b><u>PSC:</u></b></p> <p><b>For purposes of asylum:</b> Per se PSC if you find that the crime is an aggravated felony. <i>See</i> INA § 208(b)(2)(B)(i) (“[A]n alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.”)</p> <p><b>For purposes of withholding:</b> NO Because the maximum penalty possible is one year, a conviction under CVC § 2800.2 is not <i>per se</i> a PSC for purposes of withholding. <i>See</i> INA § 241(b)(3)(B)(iv) (“[A]n alien who has been convicted of an aggravated felony (or felonies) for . . . an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.”).</p> <p><b>Under <i>Matter of Frentescu</i>, 18 I&amp;N Dec. 244 (BIA 1982): NO PUBLISHED NINTH CIRCUIT OR BOARD CASE ON POINT</b></p>	N/A

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longer serve as the definition of the crime of violence aggravated felony).			
<b>Unpublished Cases:</b>			
	(b) (6) (BIA May 9, 2018) (unpublished) (finding that willful driving of a vehicle on a highway in the direction opposite of lawful traffic during flight from a pursuing officer, in violation of CVC § 2800.4, “categorically involves moral turpitude”).		N/A
<b>Relevant to Analysis:</b>			
	<b>Be aware of Cal. Penal Code § 18.5:</b> CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days beginning January 1, 2015. <u>Whether this impacts removability and eligibility for relief under INA § 237(a)(2)(A)(i)(II) depends on the date of the respondent’s conviction.</u> See <i>Matter of Velasquez-Rios</i> , 27 I&N Dec. 470, 472–73 (BIA 2018). For more information, see end of this chart.	Under <i>Mairena v. Barr</i> , 917 F.3d 1119 (9th Cir. 2019), a judge may consider sentencing enhancements when calculating the “aggregate term of imprisonment” to determine whether a conviction constitutes a per se particularly serious crime.	N/A

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### GENERIC OFFENSES

#### “SEXUAL ABUSE OF A MINOR” – TWO DEFINITIONS

1) A crime may qualify as the federal generic offense of “sexual abuse of a minor” if: (1) the conduct prohibited by the criminal statute is sexual; (2) the statute protects a minor; and (3) the statute requires abuse. *Sanchez-Avalos v. Holder*, 693 F.3d 1011, 1016 (9th Cir. 2012) (quoting *Pelayo-Garcia v. Holder*, 589 F.3d 1010, 1016 (9th Cir. 2009)); *see also United States v. Medina-Villa*, 567 F.3d 507 (9th Cir. 2009). A criminal statute includes the element of “abuse” if it expressly prohibits conduct that causes “physical or psychological harm in light of the age of the victim in question.” *See Sanchez-Avalos*, 693 F.3d at 1016.

2) A statutory rape crime will qualify as “sexual abuse of a minor” if it includes the following elements: (1) a *mens rea* of “knowingly” (as to engaging in the act); (2) a sexual act (3) with a minor who is at least 12 but not yet 16 years of age; and (4) an age difference of at least four years between the defendant and the minor. *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1152 (9th Cir. 2008) (en banc). *abrogated on other grounds by U.S. v. Aguila Montes de Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc).

#### “CRIME OF CHILD ABUSE”

Any offense that (1) involves an intentional, knowing, reckless, or criminally negligent act or omission that (2) constitutes maltreatment of a child or that impairs a child’s physical or mental well-being, including sexual abuse or exploitation. *Fregozo v. Holder*, 576 F.3d 1030, 1036 (9th Cir. 2009) (quoting and deferring to the Board’s interpretation of the offense in *Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512 (BIA 2008)); *see also Matter of Soram*, 25 I&N Dec. 378, 381 (BIA 2010) (stating that the term ‘crime of child abuse’ is not limited to offenses requiring proof of injury to the child, but also includes those crimes which unreasonably place a child in a situation that poses a threat of injury to the child’s life or health).

#### “CRIME OF VIOLENCE”

Under 18 U.S.C. § 16, a crime of violence is:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The Supreme Court recently affirmed the Ninth Circuit’s decision in *Dimaya v. Lynch*, in which it held that 18 U.S.C. § 16(b) was unconstitutionally vague. *See Sessions v. Dimaya*, 138 S. Ct. 1204 (9th Cir. 2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).

#### “CRIME INVOLVING MORAL TURPITUDE”

There are two basic types of CIMTs: “those involving fraud and those involving grave acts of baseness or depravity.” *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008) (quoting *Carty v. Ashcroft*, 395 F.3d 1081, 1083 (9th Cir. 2005)). Furthermore, “a crime is deemed morally turpitudinous if it is ‘vile, base, or depraved,’ and ‘violates accepted moral standards,’; ‘the essence of moral turpitude’ is ‘an evil or malicious intent.’” *Gonzales-Cervantes v. Holder*, 709 F.3d 1265, 1267 (9th Cir. 2013) (quoting *Latter-Singh v. Holder*, 668 F.3d 1156, 1161 (9th Cir. 2012) (internal quotation marks omitted).

For sexual offenses, whether the crime involves moral turpitude turns on whether there is (1) actual harm or (2) a protected class of victim.” *Id.* (citing *Nunez v. Holder*, 594 F.3d 1124, 1132 (9th Cir. 2010)).

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**Be aware of Cal. Penal Code § 18.5:** CPC § 18.5 lowered the maximum possible sentence that can be imposed for a California misdemeanor offense from 365 days to 364 days, for purposes of INA § 237(a)(2)(A)(i)(II), beginning January 1, 2015. Whether this impacts removability and eligibility for relief depends on the date of the respondent's conviction. In 2018, the Board held that it will not give retroactive effect to CPC § 18.5 because the language of INA § 237(a)(2)(A)(i)(II)—concerning whether an alien has been convicted of a CIMT for which a sentence of one year or longer “may be imposed”—is a backward-looking inquiry into the maximum possible sentence the respondent could have received for his offense at the time of his conviction. *Matter of Velasquez-Rios*, 27 I&N Dec. 470, 472–73 (BIA 2018). For misdemeanors prior to the enactment of CPC § 18.5, that was 365 days. Thus, if a respondent has a California misdemeanor conviction dated prior to January 1, 2015 that qualifies as a CIMT, that respondent has been convicted of an offense under INA § 237(a)(2)(A)(i)(II). However, a misdemeanor conviction that occurs after January 1, 2015 has a maximum sentence of 364 days, and thus a respondent would not be disqualified under sections of the INA that concern maximum sentences of one year or longer. The Board did not address the retroactive applicability of § 18.5 for any other INA section other than § 237(a)(2)(A)(i)(II). Thus, other subsections that do not use the “for which a sentence of one year or longer may be imposed” language could still be analyzed to determine whether they are backward-looking. For more information, see the Alternative Judgements Chart.